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Vol. VII
TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1942

No. 606

LOUIS BUCHALTER, PETITIONER,

vs.

PEOPLE OF THE STATE OF NEW YORK

**ON WRIT OF CERTIORARI TO THE COUNTY COURT OF KINGS COUNTY, STATE OF
NEW YORK**

No. 610

EMANUEL WEISS, PETITIONER,

vs.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

No. 619

LOUIS CAPONE, PETITIONER,

vs.

PEOPLE OF THE STATE OF NEW YORK

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NEW YORK**

PETITIONS FOR CERTIORARI FILED { **DECEMBER 30, 1942.**
JANUARY 2, 1943.
JANUARY 4, 1943.

CERTIORARI GRANTED MARCH 15, 1943.

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By Mr. Turkus:

Q. Mr. Prentice, is that the Flatbush section of Brooklyn?

A. Yes.

Q. And is that in close proximity to Bedford Avenue, where you live?

A. No, it is between Nostrand and New York Avenue.

Q. Prior to that time did you live at 440 Seventh Street?

A. Yes.

Q. That is Park Slope, isn't it?

A. That is right, near Seventh Avenue.

Q. Have you lived in Brooklyn a number of years?

A. I was born here. 1933 I moved out of here—1932. I lived in Queens for four years, and four years in Buffalo, came back here less than a year ago.

Q. The trestle board lists your occupation as that of cashier, is that correct?

A. Well, I am unemployed now, through no fault of my own.

Q. What was your employment when you were engaged in occupations? What did you do, what kind of work?

A. I was always an office man, office manager, my last job.

Q. What was the nature of the work done by the company for which you were office manager?

A. We were commission merchants.

[fol. 1040] Q. Dealing in produce?

A. In knit goods, underwear, Broadway and Worth Street.

Q. How many years have you been in that business?

A. I was there seventeen years.

Q. Is that on the edge of the clothing district in Manhattan?

A. No, it is white goods district.

Q. Did you have any contacts of any kind, nature or description in the garment center, the clothing district, the men's clothing?

A. No.

Q. Women's clothing, or any type of clothing?

A. No.

Q. When you were up in Buffalo, what did you do, Office work, too?

A. No.

Q. Was that a different type of work? Were you in a different line than knit goods?

A. When I was in Buffalo?

Q. Yes.

A. I did not do anything; I lived with my son.

Q. At any rate, the seventeen years of your life was devoted to work in this knit goods concern?

A. Yes.

Q. Can you tell me the name of the company?

A. Robert C. King & Company.

Q. Did you in your work in that knit goods concern become familiar with the name of Lepke? Did you ever hear that name?

A. No.

Q. Any familiarity with the name of Gurrah?

A. No. We just represented. Our mills were all out of town, Pennsylvania, New England, and in the South. We [fol. 1041] were selling agents for the mills; that is all.

Q. Did business keep you or put you into any kind of contact with any officials of the Amalgamated Clothing Workers of America?

A. No.

Q. Is there any significance to your mind in connection with the name of Murray Weinstein, or Samel Katz.

A. No.

Q. Or Bruno Belia, an organizer?

A. No.

Q. Salvatore Marazzano?

A. No.

Q. Did you come in any contact with people involved or connected with clothing trucking?

A. No.

Q. Do you know any officials of any clothing trucking union?

A. No.

Q. For example, do you know anybody in Local 240?

A. No.

Q. Local 204? Did you come in contact with any kind of truckers at all?

A. Only, well, we had one man done our trucking, a fellow named Joe Kyle (?), on Leonard Street.

Q. Is the name of Max Silverman familiar at all, or Wolfie Goldis?

A. No.

Q. Or a bondsman by the name of Willie Alberts?

A. No.

Q. Does the name of Emanuel Buchalter or Phillie Kowas mean anything?

A. No.

Q. Names of Bellanca and Tosca?

A. No.

Q. Or Terry Burns and Abie Slobo?

A. No.

Q. Curley Holtz?

A. No.

Q. Since you received your notice as a prospective juror [fol. 1042] in this case, did anybody speak to you about the case?

A. No.

Q. There are nine lawyers representing these three defendants: former Assistant District Attorney Barshay, former Assistant United States Attorney Wegman, and Mr. Climenko representing Buchalter. Do you know any of those three?

A. No.

Q. Anyone in their law offices?

A. No, sir.

Q. Defendant Weiss is represented by former Judge Talley, former Assistant District Attorney Cuff, and former Assistant United States Attorney Kriendler. I take it you know none of those three?

A. No.

Q. Do you know anyone in the law offices?

A. No, sir.

Q. Defendant Capone is represented by Mr. Sidney Rosenthal, Mr. Leon Fischbein and Mr. Emanuel Rosenberg. Do you know any of those three lawyers?

A. No, sir.

Q. Do you know whether you know anyone associated with them in the practice of law?

A. No.

Q. Do you know intimately or closely anyone who specializes in the defense of criminal cases?

A. No, sir.

Q. Do you know a lawyer by the name of William Kleinman or David Price?

A. No.

Q. Do you know the District Attorney of the county, Judge O'Dwyer, or any member of his staff or assistants?

A. I do not.

Q. Did you when you were a resident of Brooklyn know the former District Attorney, Mr. Geoghan, or any member of his staff?

A. No, I was in Buffalo then, when he was District Attorney.

[fol. 1043] Q. Since you have been back in Brooklyn O'Dwyer has been the District Attorney?

A. Right.

Q. Mr. Prentice, do you find any fault with a prosecution which will avail itself of the use of *one of the co-participants* in the crime and use that testimony against the defendants on trial?

A. No.

Q. Do you have any bias or prejudice, or do you find any fault with the prosecutor who would use that kind of testimony in a case?

A. No, sir.

Q. Have you heretofore served as a juror in a criminal case?

A. I have not.

Q. Have you had any jury experience in any type of litigation?

A. Well, civil cases.

Q. Did those cases go to a conclusion, and by that I mean did you have the benefit of listening to the Judge's instructions on the law?

A. I did.

Q. In that case I assume that you applied the instructions of law that the Judge gave you to the facts of the civil case?

A. That is right.

Q. Do you feel, if accepted as a juror in this case, that you can take the instructions of law in a criminal case and apply them to the facts in the case?

A. I do.

Q. May I go along with the understanding, then, that you have no fault with the prosecution which employs the use of accomplice testimony?

A. No, sir.

[fol. 1044] Q. And no fault to find with the prosecutor who takes that kind of testimony in to use in a case?

A. No.

Q. And may I go along with the understanding that you find no fault with the prosecutor who breaks a case from the inside by the use of accomplice testimony?

A. No.

Q. Will you apply the law with respect to weighing the believability of an accomplice or a co-participant in the commission of the crime pursuant to the instructions that the Judge gives you?

A. Yes.

Q. Will you look at who the accomplice is and look at his past associations with criminals, his past criminal acts, and every vicious and every immoral thing that the accomplice has done in his whole life, will you look them over with care and caution and weigh everything when you are trying to find out whether the truth is coming from his lips? Will you do that?

A. I will.

Q. Will you by the same token remember that we are not dealing with individuals that we frequently meet in the ordinary walks of life? Do you understand what I mean by that?

A. I understand.

Q. You were in the textile business, you met merchants and you met business men all during your life. You used certain tests which you applied to a business man as to his honesty. Will you use common sense and understanding when you are working on a criminal case where there is the [fol. 1045] testimony of an accomplice, to find out if this accomplice is telling the truth about this murder?

A. I will.

Q. And will you use common sense and understanding to see whether he is not only telling the truth about the murder, but whether or not there is other evidence in the case which links up the defendants or tends to connect them with the commission of the crime?

A. I will.

Q. No matter how you believe an accomplice, or no matter how many a District Attorney had, unless he had other evidence which tended to connect the defendants with the commission of the crime, your hands as a juror would be tied, you would have to acquit, wouldn't you?

A. I did not catch that.

Q. Is your state of mind such that you understand that even if you believe an accomplice is telling the truth, even

if you believe it, and believe from his story that he did just what he said he did, and the defendants did just what the accomplice said they did, in the commission of the murder, even if you believe that, if that is all the District Attorney has given the case, your hands are tied and you must acquit, because you cannot convict upon the testimony solely of an accomplice. Do you understand that?

A. I do.

By the Court:

Q. He means without corroboration.

A. Without corroboration.

By Mr. Turkus:

Q. In looking for the corroboration in the case, that is [fol. 1046] the other evidence not coming from the accomplice but coming from another source, and seeing whether or not that tends to hook up or connect these defendants with the commission of the crime, will you use common sense and understanding in finding out the issue in the case?

A. I certainly will.

Q. And will you devote your mental energies to finding out, is the accomplice in this case telling the truth about these defendants when he gives his testimony in this courtroom?

A. Yes.

Q. And will you apply your mental faculties in finding out are these three defendants implicated in the murder?

A. I will.

Q. If selected as a juror, will you talk the case over with the other jurymen with reason and common sense?

A. I certainly will.

Q. Will you, if selected as a jurymen, listen to reasonable argument and discussion in the jury room?

A. I will.

Q. Simply because there are a lot of lawyers for the defendants, because there are three defendants, and should you hear the same argument urged three times by three different lawyers, would that impress itself in your mind with three times the effect, because you heard it thrice repeated?

A. No, it would not.

Q. Bearing in mind that there cannot be any conviction upon uncorroborated testimony of an accomplice, should some of the lawyers argue that everybody in the case is an [fol. 1047] accomplice, will you use your judgment in weighing that fact?

A. I certainly shall weigh the evidence.

Mr. Barshay: I object to the form of the question.

The Court: Overruled.

Mr. Barshay: Exception.

Q. In other words, is your frame of mind such that it is your job to find out one issue here: Are these defendants guilty or innocent?

A. Yes.

Q. And that just because somebody says a witness is an accomplice, is your frame of mind such that it is your investigation that finds that out?

A. Weigh the evidence.

Q. Something has been said here by one lawyer representing Buchalter concerning the fact that he has been heretofore convicted of crime and sentenced to a long term in jail for the conviction, and the other prospective talesmen were asked would they be prejudiced against Buchalter for that reason. Have you, sir, any prejudice against Buchalter because he has been heretofore convicted of crime?

A. Absolutely none.

Q. By the same token, would you relax your duty as a juror in the case because Buchalter is in jail?

A. No.

Q. Would you deviate from a proper verdict because he has been convicted of some past crime?

A. Certainly would not.

Q. You are going to use your mental faculties, are you not, in deciding is he implicated with these particular defendants in this murder?

A. This particular one.

[fol. 1048] Q. If accepted as a juror,—there are certain safeguards and legal rights that every defendant on trial must have under our law,—will you give to these three defendants on trial every Constitutional safeguard and every legal right that the law says they shall have?

A. Certainly will.

Q. And the law and the safeguards will be told to you by Judge Taylor. You know that?

A. I know that.

Q. You will give those defendants everything they are entitled to—correct?

A. Yes.

Q. By the same token, after you have given them every benefit that the law says they should have and you have given them every Constitutional safeguard that the law says men charged with crime shall have—

A. I will.

Q. —and you have heard all the evidence in the case and then your mind tells you beyond a reasonable doubt that there are three guilty men at the bar of justice, that Buchalter, Weiss, and Capone, are guilty of murder in the first degree, would you hesitate to say so?

A. I would not.

Q. Would you have any fear or reluctance in so saying?

A. I would not.

Q. I take it you have no conscientious or other scruple which would preclude you from being a fair and conscientious juror in the case?

A. I have not.

Q. If, after you hear all the evidence in the case and you talk it over with the other jurors, you hear the lawyers [fol. 1049] tell you how they view the evidence, and the District Attorney how he views it, Judge Taylor tells you the law, and your mind is satisfied now that there are three involved in the conspiracy here, that the three of them, acting together, are guilty of murder in the first degree, the murder of Joe Rosen, would you hesitate to say so?

A. I would not.

Mr. Turkus: No challenge for cause.

By Mr. Barshay:

Q. Mr. Prentice, you said you were a cashier. Did you handle money yourself?

A. I certainly did. That is, when I first went there I had complete charge.

Q. And were you ever a victim of any crime?

A. I have not.

Q. Has your company been the victim of a crime?

A. I have not.

Q. You volunteered the fact that your unemployment at present is not because of your own fault.

A. No.

Q. Do you attribute it to any particular cause?

A. What?

Q. I say, do you attribute it to any particular cause?

A. Only one.

Q. Do you mind telling us?

A. Chain stores.

Q. In other words, your prejudice has nothing to do with this case?

A. No, just simply that the chain stores eliminated the commission merchants.

Q. And thus they deprived you of a livelihood?

A. That is it. Then I went up to Buffalo with my son, [fol. 1050] who is in the automobile business.

Q. And so no part of this case, directly or indirectly, has anything to do with that fact?

A. No.

Q. So you are now free to serve as a juror?

A. I certainly am.

Q. Now, Mr. Prentice, have you read anything at all about this case?

A. No.

Q. Before you came here?

A. No.

Q. I take it you read newspapers?

A. I of course read the *Times* and the *Eagle* and once in a while the *News*.

Q. And you have read them for the last year and a half?

A. What?

Q. Have you read them for the last year and a half?

A. No, only for the last year. I was in Buffalo previous to that.

Q. In the last year there have been items in the press concerning the defendants, or this case, have there not?

A. I don't know. My principal thing in reading the papers is the want-ads, and after that the business section and after that the sporting section, and the others did not interest me.

Q. General headlines don't attract your attention?

A. Did not attract my attention at all.

Q. Neither the war—

A. The death notices, they might attract my attention.

Q. And since coming here, Mr. Prentice, have you read anything at all about the case?

A. Only in reference to the trial or getting the jury, [fol. 1051] that's all. I do not know the details.

Q. Do you listen to the radio?

A. Certain programs.

Q. And did you ever hear anything at all about the investigations of Judge O'Dwyer on the radio?

A. No.

Q. Or this case or the defendants?

A. Absolutely no.

Q. You have been sitting here a reasonable time listening to the prospective jurors being questioned. Have you formed any opinion with respect to this case?

A. No.

Q. Since being here?

A. Absolutely not.

Q. Has any question that was asked affected your judgment in this case, by either Mr. Turkus or by the defense counsel?

A. No.

Q. Has any juror discussed the case here with you?

A. Absolutely not.

Q. Just in casual conversation?

A. No.

Q. Has anybody in your home talked about it?

A. No, only asking how I am making out.

Q. Has anybody expressed to you an opinion about this case?

A. No, no.

Q. And you can now say with reasonable certainty, Mr. Prentice, that nothing that you read or heard or spoke about has left any impression with respect to this case?

A. Absolutely not.

Q. You are then of a free and open mind?

A. I certainly am.

Q. The number of counsel that are present in court means [fol. 1052] nothing to you?

A. Nothing whatever.

Q. There are only three here for the prosecution, but behind them there is a lot of reserves fortifying the front line. You know, the whole office has something to do with this case.

A. I understand.

Q. As my office has something to do with this case, even though they have never stepped into this court. You understand that?

A. I understand.

Q. Numbers don't count. Have you heard any radio speeches concerning the forthcoming election?

A. I don't bother with them.

Q. You have not at any time taken sides?

A. No.

Q. You don't intend to? I say you don't intend to take active sides in this forthcoming election?

A. No, I am not interested.

Q. You understand that both a prosecution and the defense handle a case as it is given to them by those involved. I am not a witness in this case, neither is Mr. Turkus. You know that?

A. Yes.

Q. And so that when Mr. Turkus says to you, have you any fault to find with a prosecutor who breaks the case from the inside, do you accept that as the fact as you are sitting here now? Do you accept that as the fact, as a true fact?

A. What?

Q. That this case was broken from the inside?

A. I don't know.

Q. You will wait until you find that out from the witness? [fol. 1053] A. Find that out. I do not know.

Q. Mr. Turkus said to you something about accomplice testimony. Will you take into consideration that the person who shall now take the stand and claim he is an accomplice has at another time and place taken the stand and said he was not an accomplice? You will take that into consideration, won't you?

A. I certainly will.

Q. In other words, if the source of the testimony is polluted, you won't be so ready to accept it, will you?

A. I did not catch that last part.

Q. I said if the source of the testimony is polluted, you won't be so ready to accept?

A. I certainly will not.

Q. And, by the same token, if the other testimony in the case which shall be offered comes from a polluted source, you won't be ready to accept that either, will you?

A. That polluted part, I do not understand.

Q. I will use the word dirty. It comes — people who themselves have led a life of crime. They are moral bankrupts, every one of them who will testify in this case, with the exception of the police and the expert testimony. That is what I mean when I say polluted.

A. I will weigh their evidence.

Q. In other words, the fact that a man comes here and says, "I will tell the truth," and raises his right hand, swears to tell the truth, that does not necessarily mean that he will?

A. No, not in my judgment.

[fol. 1054] Q. Even though he will now say, "Heretofore I have lived a life of crime, but from now on my life starts new; I am telling the truth," you will want to find out about that, won't you?

A. I certainly will.

Q. Will you expect the defendants to prove anything?

A. Would I expect the defendant to prove anything?

Q. Yes.

The Court: He does not know the law.

The Talesman: I do not know the law.

Q. Perhaps, Mr. Prentice, I should put the question this way: You have heard before other jurors being told by his Honor that the burden of proof is with the prosecution?

A. I did.

Q. You heard that?

A. Yes.

Q. I ask you, in view of that fact, would you personally expect any defendant to prove anything at all in this case?

A. Since I understand the law, it is up to the District Attorney to prove it.

Q. That is correct. I have said that. Is there anything in your state of mind, sir, that would cause you to require, irrespective of the law, that something should be forthcoming from the defense in explanation in this case?

A. Since I understand it, it is not required by the law, is it?

The Court: The question is, will you follow it?

The Talesman: I would follow the law.

Q. And will you follow it strictly and implicitly?

A. I certainly would.

[fol. 1055] Q. Sometimes people have a slight disagreement with the requirements of the law, but they must subordinate their own ideas to the demands of the law; you understand that?

A. I understand.

Q. So I take it, Mr. Prentice, that you will only live up to what the law requires?

A. I certainly will.

Q. And if the law shall be given to you by the Court that our client need not take the stand, need not explain, need not disprove, you won't demand that he shall explain or disprove or take the stand?

A. Absolutely not.

Q. And his failure to do so shall draw no unfavorable inference toward him in any regard whatever?

A. No.

Q. You understand and will follow that law?

A. I certainly will.

Q. I brought out before, our client is incarcerated for a long time.

A. I have quite a cold. I cannot hear.

Q. Your hearing is impaired just temporarily?

A. I got a little bronchitis.

Q. Can you hear me now, sir?

A. I certainly can.

Q. I said to you, our client, it has been brought out, is incarcerated for a long time because of some other matters that have nothing to do with this case, and I asked the other jurors whether or not they had a prejudice against a man who may take the stand and admit those things, and they said no. Do you say no, you have no prejudice against him?

A. I have no prejudice, no.

[fol. 1056] Q. You understand that, whatever happened at any other time in his life, it has nothing to do with this case?

A. That is right.

Q. Unless he offers himself for cross-examination, and then you will take into consideration his credibility?

A. I certainly will.

Q. You cannot come to the conclusion, sir, that because of other things, whatever they may be, you may not like a

defendant. If the defendant is not proven guilty beyond a reasonable doubt in this case, you must acquit.

A. I understand.

Q. Do you feel that way?

A. I understand it.

Q. That shall be your personal and individual opinion throughout this case?

A. Yes.

Q. Encompassed in the enforcement of the criminal law is the presumption of innocence. That is a substantial right given to every defendant. You shall give it to him if you are instructed?

A. Yes.

Q. About that there is no doubt, Mr. Prentice?

A. I will give it to him until we prove he is guilty.

Q. Beyond a reasonable doubt?

A. Beyond a reasonable doubt, yes.

Q. And always in his favor until twelve of you agree, will you keep in mind, if the Court shall so charge you, that that presumption is with him even in the jury room as you are arguing, even if five should be against or six for him [fol. 1057] or seven against him and five for him, that presumption shall always be in his favor, isn't that so?

A. That is right.

Q. Until it is wiped out by unanimous agreement.

A. Unanimous agreement.

Q. Now, Mr. Prentice, will you take into consideration the reason that motivates every person who takes the stand and gives testimony?

A. I will.

Q. And if you find from the witness stand that someone has an all-selfish desire to help himself and by virtue thereof prostitutes his oath and gives testimony which you reject, you will have the courage to reject it, won't you?

A. I certainly will.

Q. No matter who it is?

A. Don't make any difference.

Q. Even if he takes the stand and he says, "Nobody has promised me a single hope of reward," you are not bound to accept that, are you?

A. Not bound to, no.

Q. He may even be lying about that. If you make up your mind from the evidence that he is lying, you will reject his testimony, won't you? Do you understand me?

Mr. Turkus: That is an instruction of law that is not quite accurate either. That is inquiring into the juror's knowledge of the law.

Mr. Barshay: No, I am not.

Mr. Turkus: You are.

Q. I will reframe it, Mr. Prentice: In other words, you [fol. 1058] are the only one to decide whether or not any person who takes the stand tells the truth?

A. Yes.

Q. Isn't that so?

A. Right.

Q. And so if you find that a man has raised his hand to tell the truth and he is a pampered person, living at a hotel at the State expense and getting rides and playing baseball and getting meals and collecting shylock money with the help of the authorities, if you believe that from the witness stand you will be very cautious, won't you?

A. I certainly will.

Q. Before you will say, "I accept his testimony," isn't that so?

A. I will weigh his evidence very carefully.

Q. Whether he is an accomplice or not?

A. That is right.

Q. And that goes to the corroborating witness too?

A. Yes, certainly does.

Q. That, too, is a part of the enforcement of the criminal law. You understand that?

A. I understand.

Q. Each defendant here is entitled to a separate verdict. Do you agree with that?

A. Does not the Judge charge that?

Q. Yes, I take it the Judge will tell you that. I am sure his Honor shall charge you that the verdict as against each defendant must be separate. Do you agree with that, if the Court shall so charge?

A. If the Court decides.

Q. That is an elementary proposition. And if the Court shall charge you that you can only use the evidence applicable to one defendant against one defendant, you will follow [fol. 1059] low that instruction too?

A. I certainly will.

Q. In other words, Mr. Prentice, you cannot bunch the evidence together and out of it draw one verdict.

A. No.

Q. Unless his Honor charges you the evidence of one is applicable to the other, you shall not and will not use it, and you won't permit anybody else in the jury room to use it; isn't that so?

A. I will not, no.

Q. All that is part of the enforcement of the Penal Law. Do you agree with it?

A. Yes.

Q. Now, the District Attorney in every case speaks first. You won't make up your mind immediately, because he speaks first, will you?

A. I certainly will not.

Q. The District Attorney also has the additional advantage of speaking last. He sums up last. He answers all the arguments of counsel. And I take it, sir, you promise me now that just because he speaks first and he speaks last you will not accept his argument as final because of the position he is given by the law, will you?

A. I do not understand.

Q. You won't accept his testimony because he speaks first? You said that. I mean the opening argument of the District Attorney. Under the law he has the right and he does speak last. After all the lawyers get finished Mr. Turkus shall sum up. The position of his speaking last, that will not influence your judgment in the case?

A. It will not, no.

Q. Because we will no longer be able at that point to [fol. 1060] make any answer to any summation he makes. That is only a matter of procedure. You understand that?

A. I understand that.

Q. You don't begin to make up your mind until you rehash the testimony in the jury room?

A. Right.

Q. And until his Honor shall instruct you with respect to the law.

A. Right.

Q. Frankly, Mr. Prentice, I ask you now, can you be an impartial juror in this case to both sides?

A. I have no doubt that I can. I think I can. I have no doubt.

Q. You have no doubt that you can? Is that what you said?

A. That is right.

By Mr. Rosenthal:

Q. Mr. Prentice, have you any relatives on the police force?

A. No, not that I know of.

Q. You have no high police officials that are friendly with you or you with them?

A. No, sir.

Q. Of course, you have heard repeated a number of times, practically the same questions to other men since you have been in the court-room. That is true, is it not?

A. That is right.

Q. You realize that each attorney that has addressed you on behalf of the defendant represents a different defendant on trial; you understand that?

A. I understand that.

Q. You understand the purpose of joining three men together saves the repetition of such evidence as may be against any one of them; is that clear to you?

A. That is right.

[fol. 1061] Q. However, do you further understand that in judging the evidence in your jury room you can only use so much of the evidence as against any one particular defendant as applies to that particular defendant? Is that clear to you?

A. I know that.

Mr. Turkus: That instruction of law does not take into account the proving of a conspiracy and acts done in furtherance of a conspiracy.

Mr. Rosenthal: Then that applies to him, doesn't it, Mr. Turkus? Whether it is a conspiracy or what it is, so much of the evidence as applies to the particular defendant is the only part of the evidence can be used against him.

Mr. Turkus: If there were a conspiracy to kill a man, any act done by any conspirator in furtherance of the conspiracy would be and could be accepted by the juror as against the other defendants.

Mr. Rosenthal: And that would apply to that defendant, wouldn't it?

The Court: Why not reframe the question and clarify that?

Q. The Court will charge you, Mr. Prentice, the law. You understand that? Never having sat on a criminal case before, do you also understand that the only one that can tell you the law in this case is the Judge?

A. I understand that.

Q. Do you further understand that no matter how much the lawyers talk, that is not evidence? You understand that?

[fol. 1062] A. I understand that.

Q. You only use their talk to you in the event it agrees with your idea of what the evidence is. That is clear?

A. That is right.

Q. The Judge in charging the law will tell you just what type of evidence can be utilized against what particular defendant. Is that clear to you?

A. That is right.

Q. And under the instructions of the Court will you only apply such evidence against any one particular defendant as the Court in its instructions tells you is the evidence that can be applied against him?

A. I will.

Q. You are not going to say to yourself, Here are three men on trial, and because certain people have testified against certain other people, that that in itself makes it binding against the others, unless the instructions of the Court would warrant you to do that? Isn't that true, sir?

A. Yes.

Q. On the question of the accomplices and the independent testimony, Mr. Barshay has just questioned. You recall his questions. Assuming, sir, that this so-called independent evidence, which the District Attorney tells you is independent evidence, consists of a statement, an alleged conversation which one of the District Attorney's witnesses will say he had with one of the defendants—Have I made myself clear so far?

A. Yes.

Q. In other words, one of the men goes on the stand for the People, called by the District Attorney, and he says, [fol. 1063] "I know the defendant and on such and such a

day at such and such a place he, the defendant, said to me that he had something to do with the case." Is that clear so far?

A. Yes.

Q. And the District Attorney then says to you—"This is what we call independent evidence." Is that clear so far?

A. Yes.

Q. Will you, before you accept any such type of independent evidence, search the source from which it comes?

A. Certainly.

Q. And if you find it comes from a man who has every reason in the world, even though he is under oath, to lie, will you give it the care and the scrutiny and the caution which you would do if you were called upon to judge something in your ordinary course of business?

A. I would.

Q. And if you determine that that particular individual or those individuals have theretofore under oath in a court of similar jurisdiction to this, taken the oath and with that oath in mind have lied as well as have committed numerous other crimes, will you very, very carefully scrutinize to see whether or not there is not some motive, consideration or otherwise, to make him lie here and now? Will you do that?

A. Certainly will.

Q. And if you feel that because of his former propensity for non-truth telling and because of his former activities, a doubt is created in your mind as to whether he is telling the truth, will you disregard his testimony if there is a doubt in your mind as to whether he is telling the truth, in [fol. 1064] view of his past actions and activities?

Mr. Turkus: That is a question of law. I object to it in that form.

Mr. Rosenthal: I have not finished the question. You are so quick to jump up when other people are talking, to insist on other people—

Mr. Turkus: You take care of your client; I will take care of The People of the State. Don't be so disagreeable.

Mr. Rosenthal: I object to that.

Mr. Turkus: I say you cannot take care of The People.

Mr. Rosenthal: I wish I could take care of my client as well as you did when you were practicing law.

Mr. Turkus: Thank you for the dubious compliment.

The Court: This is not the Federal Court.

Did you finish your question, Mr. Rosenthal?

Mr. Rosenthal: I did not, when I was so rudely interrupted. I was in the midst of a question, which I will withdraw and now repeat in practically the same form.

Q. If after you see this witness on the stand, or these witnesses, and if after you hear them testify and there tell under questioning by the District Attorney or are compelled to tell under questioning by defense attorneys that they have previously lied under oath and have committed numerous crimes, a doubt is created in your mind as to whether they are now telling the truth, would you hesitate [fol. 1065] to resolve that doubt in favor of the defendants?

The Court: Reasonable doubt.

Q. Is that clear?

A. Reasonable doubt.

Q. Yes. The doubt would be reasonable doubt if it is created in your mind, sir, would it not, as to the truth of the statement of the individual?

Mr. Turkus: Just a minute. That is argumentative.

Mr. Rosenthal: I withdraw it, to save time.

Mr. Turkus: Magnanimity.

Q. Now, sir, directing my question to you again and not to the District Attorney, if the only evidence in this case of an independent nature is that of a person of the type which I have already described to you, and if the Court tells you that the law of our land, not only as it applies to these defendants, but to anybody, is that there must be independent evidence tending to connect the defendant with the crime—is that clear to you?

A. It certainly is.

Q. —would you hesitate, if you were unable to make up your mind as to whether these people were telling the truth and a doubt was created by that, reasonably, because of your inability to make up your mind, would you hesitate to resolve that doubt to the benefit of the defendant and acquit him?

A. I would not.

Q. Now, you understand from being here, sir, that at no time, even though a defendant may take the stand himself, even though he may call numerous witnesses, does he have to prove his innocence. You understand that? You understand that at no time, if he so desires, does he have to take the stand or say anything against

the evidence that is offered by The People? You understand that?

A. Yes.

Q. You heard the District Attorney say to other men, about an alibi, would you take the law from the Court? Did you hear him say that in questioning other jurymen?

A. Yes.

Q. Do you feel, sir, that because a man may take the stand and offer an alibi or offer any defense, that the burden shifts to him to prove his innocence?

Mr. Turkus: That is a question of law.

Mr. Rosenthal: I have already explained the law, and asked him does he feel—

Mr. Turkus: I have addressed an objection to your Honor. The Court: Sustained.

Mr. Rosenthal: Respectfully except.

Q. Because a defendant—Having in mind that the Court will charge you that a defendant need never prove his innocence and need never offer any evidence of any character to prove his innocence, do you yourself feel that if a defendant does offer evidence that the burden thereby shifts to him?

Mr. Turkus: Objected to. It is a question of law.

The Court: Sustained.

[fol. 1067] Mr. Rosenthal: I respectfully except.

Q. If an offer of alibi is made by a defendant and the Court charges you that it is not necessary for a defendant to establish his innocence by a defense of alibi, but that if the alibi in and of itself raises a doubt in your mind, a reasonable doubt as to whether the particular defendant committed the crime, that doubt must be resolved in his favor and you must acquit him, would you follow that?

A. I certainly would.

Q. So that if an offer of an alibi is made by any defendant, you will look at that evidence of an alibi, is that true?

A. That is right.

Q. And if, after looking at it, that alibi creates in your mind a reasonable doubt as to whether that particular defendant committed the crime, you will resolve that doubt in favor of the defendant and acquit him; is that correct, sir?

A. If I am charged that way by the Court.

Q. I am always assuming in all of my questions that the Court will charge you that that is the law. You find no fault with the law of that character, sir?

A. No.

Q. Merely because of the fact, as is evidenced by what has transpired in this court-room, that this case has procured some publicity, would that in any wise affect your judgment in your jury room?

A. Absolutely no.

Q. You feel that you would have courage, if you on your conscience were not convinced of the guilt of any one of [fol. 1068] these men or all of them, to come in and evidence that fact by your verdict, don't you, sir? There is no question in your mind as to that, is there?

A. No.

Q. You also feel, sir, that in the jury room, if you come to a conclusion adverse to a great number of the other jurymen and that conclusion is your honest opinion of what the evidence in the case indicates in your mind, and if you reason dispassionately with these other men and they have not convinced you that your opinion is wrong, that you would have the courage and fortitude to stick to that conclusion?

A. I certainly would.

Q. You would not feel, as has been evidenced by questioning of the district attorney, that because you were in the minority, no matter which way—Let me withdraw the question—and sit down, please, and I will put another question.

Mr. Turkus: I should think so.

Mr. Rosenthal: I will put the same question, but I will leave out "district attorney."

Q. You would not feel, sir, that because—Let me withdraw that.

Q. You heard the District Attorney tell some of the jurymen about being arbitrary?

A. Yes.

Q. And quarrelsome in the jury room. Do you remember hearing that?

A. Yes.

Q. You would not feel that you were arbitrary or quarrelsome, would you, in the jury room because you formed an opinion on your conscience which was in disagreement or discord with a number of other jurymen?

A. I would not.

Q. And you would not feel that you were arbitrary or quarrelsome if on your conscience you retained that opinion after you listened to the argument of the majority and they were unable to change your opinion; if you stuck to that opinion you would not feel you were arbitrary, would you?

A. No.

Q. And you would not feel you were arbitrary and change your opinion merely because of the lateness of the hours or the disagreeable task or the number of men that were against you or the length of the trial, would you?

A. I would not.

Q. You would retain your opinion if it was formed on your conscience and if after listening to the reasoning the other men could not change it, wouldn't you?

A. Could not change it.

Q. Is there any reason, sir—Let me ask you another question before I ask you that. The mere fact that one or two of these defendants may know one or more of The People's witnesses, would that fact in and of itself prejudice you against these men?

A. Absolutely not.

Q. Is there anything that has not been reached by either questioning of the District Attorney or any of the other counsel which you in your own mind feel would in any wise incapacitate you from acting as a fair and impartial juror? Is there anything that you know of?

A. Absolutely not.

[fol. 1070] Q. Just this final question: You know if accepted as a juryman you are not making any commitment to Mr. Turkus as the representative of The People nor are you making any commitment to the defendants' lawyers; you know that, don't you?

A. I certainly do.

Q. You are only making a commitment to The People of the entire state of which these defendants are a part; you realize that? And your verdict must be based only on your conscience as you see it?

A. That is right.

Q. And that is the type of verdict you would give, isn't it?

A. That is right.

Mr. Rosenthal: No challenge for cause.

Mr. Turkus: Mr. Prentice is satisfactory to The People of the state.

Mr. Climenko: No challenge.

The Court: Satisfactory to both sides?

Mr. Turkus: Satisfactory to The People.

Mr. Talley: No challenge by the defense.

The Court: No peremptory challenge?

Mr. Talley: There is no peremptory challenge.

The Court: (to Mr. Prentice) Take Seat No. 2.

HARRY SILLETT, of 1716 Avenue T, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

[fol. 1071] By Mr. Turkus:

Q. Mr. Sillett—is that the correct pronunciation?

A. Yes, most people pronounce it Sillett.

Q. Is that address, 1716 Avenue T, on this trestle board, correct?

A. Yes.

Q. Is that the Sheepshead Bay section of Brooklyn?

A. It is just on the border of Sheepshead Bay between Flatbush and Sheepshead.

Q. Have you lived in Brooklyn for a number of years?

A. Since 1927.

Q. I take it you sat up here and listened to the other prospective jurors being interrogated as to their qualifications?

A. Yes, sir.

Q. Is there anything about the nature of this charge, a charge of murder in the first degree, which would impair or preclude you from being a just juror, doing a conscientious job on your oath as a juror?

A. No, sir.

Q. Have you any scruple, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Should you be charged by the Judge that the question of punishment must not enter into the deliberations of guilt or innocence, will you abide by that instruction of law?

A. Yes, sir.

Q. If so instructed, will you refuse to let anyone else talk the question of punishment in the jury room?

A. Yes, sir.

Q. It has been brought out by one lawyer for the defend- [fol. 1072] ent Buchalter that his client has been heretofore convicted of crime and sentenced to a long term in jail, the sentence of which he is presently serving, and other prospective jurors were asked would they be prejudiced against his client for that reason. Would you have any prejudice against Buchalter because he has been convicted of past crime?

A. No, sir.

Q. By the same token, would you relax your duty as a juror and deviate from a proper verdict solely because he was convicted of some other crime and is serving a jail sentence?

Mr. Climenko: I object to the form of the question.

The Court: Overruled.

Mr. Climenko: It assumes what the proper verdict is.

The Court: Would you disregard that?

The Talesman: Yes, sir.

Q. In other words, as to guilt or innocence in this murder case, that is going to be your job as a juror to find out. Am I correct in proceeding along those lines?

A. Yes, sir.

Q. Has your business in the past brought you in contact with anyone in the garment trade or in the clothing industry in Manhattan?

A. No, sir.

Q. Do you have any present connections there of any kind, nature, or description?

A. No, sir.

Q. Do you know anyone or any corporation engaged in the industry known as clothing trucking?

A. No.

Q. Do you have any contacts, presently or in the past, [fol. 1073] with persons or firms in the Brownsville-East New York area of Brooklyn?

A. No, sir.

Q. Does that hold true with respect to the Brooklyn waterfront?

A. Yes, it holds true.

Q. Has business in any wise brought you into contact or connection with any officials of the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Is there any significance in your mind to the names of Weinstein or Katz, officers of a Cutters Union?

A. No, sir.

Q. Is there any significance to the name of Bellanca or Belia?

A. No.

Q. Or Salvatore Marazzano?

A. No, sir.

Q. Is there any significance in your mind to the name of one Philip Orlofsky, a one-time manager of a Cutters Union?

A. No, sir.

Q. Do you know anyone engaged in clothing trucking?

A. No, sir.

Q. Or any official of any union?

A. No, sir.

Q. Is there any familiarity in your mind to the names of Max Silverman or Wolfie Goldis?

A. No, sir.

Q. Mr. Sillett, the trestle board lists your business as that of a manager. Is that an office manager?

A. Yes, manager of my branch.

Q. I think you said a bank branch?

A. Manager of my branch.

Q. Did you say "bank"?

A. No. National City Safe Deposit Company. I mention that because you mentioned bank.

By the Court:

[fol. 1974] Q. You are on Montague Street?

A. No, sir, not located there. We have branches all over the city.

Q. Where is your branch?

A. 10 Irving Place, New York City. That is the Consolidated Edison Building, in the building.

Q. It is up near the Astor Library?

A. 10 Irving Place is just a little higher than 14th Street, the corner of 15th and Irving Place, the corner of the Edison Building.

By Mr. Turkus:

Q. And does that company deal exclusively with the rental of safe deposit vaults?

A. Yes, sir.

Q. Is there any significance to the name of William or Willie Alberts, a one-time bondsman?

A. No, sir.

Q. Or that of Emanuel Buchalter or Philip, Phillie, Kowas?

A. No, sir.

Q. Are you in sympathy with the enforcement of the Penal Law of the State of New York?

A. Yes, I am.

Q. Since your name appeared on this special panel and specifically since you yourself received a notice that you were a prospective juror, did anyone speak to you about the merits of the case?

A. Only just casually in regard to my jury service.

Mr. Climenko: If your Honor pleases, I cannot hear Mr. Sillett.

The Talesman: I am sorry. I said just casually in regard to my appearance as a juror, in the office and at home.

Q. So that the conversations then were limited to prospective jury service, in making arrangements in the event that you were commandeered in the jury panel?

A. Yes, sir.

Q. While you sat here and other questions were asked of prospective talesmen, I spoke of the nine lawyers that are in this case, former Assistant District Attorney Barshay and former Assistant United States Attorney Wegman and Mr. Climenko, who represent the defendant Buchalter. Do you know any of those three gentlemen?

A. No, sir, except from my experience here in court, my questions here in the court. I heard Mr. Barshay's name mentioned.

By the Court:

Q. How long have you been with the National City Safe Deposit?

A. About eleven years, ten and a half years in that branch.

Q. And how long have you lived down there in the Brighton Line?

A. Since 1927. I lived around the corner from where I am at the present time five years, and I have been in that house the rest of the time, almost ten years.

Q. You are about half way between the Kings Highway station and Neck Road?

A. Yes, near Avenue U station. Avenue T is one block from the station.

By Mr. Turkus:

Q. Does that hold true with respect to former Judge Talley, who represents the defendant Weiss, former Assistant District Attorney James I. Cuff, and former Assistant [fol. 1076] and United States Attorney Kriendler, all of whom represent the defendant Weiss?

A. Yes, sir.

Q. With respect to the three lawyers that represent Mr. Capone, Messrs. Rosenthal, Fischbein, and Rosenberg, do you know any of those three?

A. No, sir, except here in court.

Q. Do you know anyone connected with their respective law offices?

A. No, sir.

Q. Do you have the acquaintance with any member of the bar who specializes in the defense of criminal cases?

A. No, sir.

Q. Is the name of William W. Kleinman or David Price a familiar name from the standpoint of a criminal lawyer?

A. No.

Q. Or that of Saul Price, former Assistant District Attorney of Manhattan?

A. No, sir.

Q. Do you know District Attorney O'Dwyer personally?

A. No, sir.

Q. Do you know any member of the District Attorney's staff by way of an Assistant District Attorney, intimately?

A. Well, I know one gentleman, Mr. Morehouse. I think he is a member of the staff.

Q. Yes, he is in charge of the Grand Jury. Would your acquaintance with Mr. Morehead in any wise affect your ability to be a fair and square juror deciding this case on the evidence?

A. No, sir.

Q. I take it then that specifically you do not know Assistant District Attorney Joseph Klein or Turkus?

A. No, sir, except here.

[fol. 1077] Q. Did you enjoy the acquaintance of any member of Mr. Geoghan's staff?

A. No, sir.

Q. Or did you know Mr. Geoghan personally when he was the District Attorney?

A. No.

Q. Have you heretofore served as a juror in a criminal case?

A. Never.

Q. Have you served as a juror in a civil case?

A. No, sir.

Q. Then this would be, if selected, your initial experience?

A. I was called several times but excused for vacation or some reason or other.

Q. Is this the first time you have gotten as far as the present seat?

A. Yes, sir.

Q. If accepted as a juror, will you conscientiously endeavor to render a verdict that is in consonance with justice?

A. Yes, sir.

Q. Will you take the law in every aspect from the trial justice, Judge Taylor?

A. Yes, sir.

Q. Do you understand from hearing other jurors questioned that the only one in the court-room that tells the law to the jury is the presiding judge? No matter how many lawyers say what the law is, or no matter how many Assistant District Attorneys endeavor to tell you what the law is, is it your understanding you take it from one person, the presiding judge in the case?

A. Yes.

Q. If accepted as a juror, will you endeavor to apply the [fol. 1078] principles of law that the Judge gives you to the case at bar?

A. Yes, sir.

Q. There has been talk about the test to be applied to an accomplice. Did you hear some of that discussion?

A. Yes.

Q. First may I ask you, do you have any fault to find with a prosecution wherein the testimony of one of the co-participants in the commission of the crime is used against the remaining defendants?

A. No.

Q. Is your state of mind such that you would reject the testimony of a co-participant in the commission of a crime, no matter what the circumstances were? Do I make that clear?

A. As I understand, it must be corroborated.

Q. That is right. What I want to find out is this: whether or not you have some inherent prejudice or bias against the testimony of an accomplice as would cause a prospective juror to reject the testimony no matter how corroborated or no matter what the circumstances?

A. No, sir.

Q. So then may I go along now with the understanding that the prosecution, neither the prosecution of the case nor the prosecutor has any handicap by way of prejudice against the testimony of an accomplice?

A. No, sir.

Q. Of course you look at the accomplice and see who he is, will you not? If he has been steeped in crime in the past, if he has been guilty of murders, if he has been committing vicious criminal and immoral acts all his life, if [fol. 1079] he has been associating with criminals, will you take all of those things into consideration when you weigh his believability?

A. Yes, sir.

Q. That is the kind of a person whose testimony you are going to look at with care and caution; isn't that right?

A. Yes, sir.

Q. Do you have any feeling that just because a man has been a criminal or just because he has committed vicious or immoral acts, that he could never tell the truth?

A. No.

Q. If you are taken as a juror, will it be your job to see whether that accomplice or that co-participant in the crime is telling the truth about this murder case?

A. Yes, sir.

Q. Of course, as the manager in the safe deposit vaults, you meet a pretty high type of citizen that goes in and out of the building, I assume, from day to day?

A. Yes, sir.

Q. There is a certain type of tests that people apply in their every-day business experience. In every-day business experience you do not meet people who commit this kind of crime; you do not meet criminals. Will you use common sense and understanding in applying tests to the testimony of an accomplice?

A. Yes.

Q. Or a co-participant in a crime?

A. Yes.

Q. Of course, is it your understanding from the law that has been discussed heretofore with other prospective jurors, that even if you believe an accomplice, if that is the only testimony in the case, that is, testimony emanating from [fol. 1080] an accomplice, even if you believe it and even if you felt that the defendants were implicated in the commission of the crime that the accomplice says they are, even if you believe that, that is not sufficient as a matter of law, and your duty would be to acquit.

A. Yes, sir.

Q. Will you give everything to the defendants that the law of the land says men charged with crime should have?

A. Yes, sir.

Q. And you will take that law from Judge Taylor?

A. Yes, sir.

Q. Give them every Constitutional right that they are supposed to have, every safeguard and every security that the law says defendants should have?

A. Yes, sir.

Q. By the same token, if, after you have heard the testimony of an accomplice and you are satisfied that the accomplice is telling the truth in this murder case and telling the truth about these defendants, and the part that they played in the murder, and then there is other evidence in the case which tends to connect the defendants with the commission of the crime, and you are satisfied beyond a reasonable doubt that these defendants at the bar, Buchalter, Weiss, and Capone, are guilty of murder in the first degree, would you have any hesitation in saying so in your verdict?

A. No, sir.

Q. Now, something has been said here to other prospective talesmen about using independent judgment and specifically about the use of the word "arbitrary" by the prosecutor with respect to another prospective talesman.

[fol. 1081] You understand the meaning of "arbitrary," do you not, Mr. Sillett?

A. Yes, sir.

Q. As distinguished from being arbitrary, will you, if selected as a juror, deliberate the case with common sense and reason with the other jurors?

A. Yes, sir.

Q. And free, of course, from any rancor or bitterness?

A. Yes, sir.

Q. And you will use the God-given brains you have got in figuring the case out; is that correct?

A. Yes.

Q. You understand that will be your job as a juror?

A. Exactly.

Q. And of course to listen to the common sense and the experience and the beliefs, with reason, that the other jurors have?

A. Yes.

Q. I take it, then, in your every-day business experience you have problems that you must iron out in conjunction with others?

A. Yes, sir.

Mr. Climenko: I object to that question, if your Honor pleases; there are problems that have to be ironed out, and this is not akin to that situation.

The Court: Sustained.

Q. Let me ask it to you this way, Mr. Sillett: Have you had experience in discussing problems with other people and in making decisions?

A. Yes, sir.

Q. Do you understand that there is no mystery in jury service, there is nothing mysterious about your job? You [fol. 1082] are here to find out are these three men guilty of murder in the first degree, or are they innocent; is that correct?

A. Yes, sir.

Q. And if selected as a juror in the case, will you devote your mental talents to finding that out?

A. Yes, sir.

Q. If selected as a juror in the case, will you conscientiously endeavor to do justice in the case?

A. Yes, sir.

Q. If after you have heard all the evidence in the case and you are satisfied and your mind has been satisfied beyond a reasonable doubt that at this bar of justice there are three guilty men who are guilty of the crime of murder in the first degree, the murder of Joseph Rosen as charged in the indictment, would you hesitate to say so?

A. No, sir.

Q. Would you have any fear or reluctance in so saying?

A. No, sir.

Mr. Turkus: No challenge for cause.

By Mr. Barshay:

Q. Mr. Sillett, were you promoted to your present position after years of faithful service to your company?

A. Well, no, sir, not exactly. I was made manager of that branch after a short training.

Q. And may I say, complimentary, of course, that you started from the bottom and they gave you a higher job and finally they made you manager?

A. Well, not exactly. I was made manager at the time after receiving training. I was made manager of that branch and I have been manager ever since.

[fol. 1083] Q. And before you managed, sir, may I know what you did?

A. That is the safe deposit company.

Q. Did you take charge of the men who came in or the women who came in and applied for safe deposit boxes?

A. Yes, sir, that is the business, renting safe deposit.

Q. Were you armed yourself?

A. Do I carry a gun?

Q. Not now, then.

A. I have a license to carry a gun, either on person or in protection of bank property.

Q. And the gentlemen who work alongside of you also have permits to carry guns, I take it?

A. Yes, sir.

Q. Are any of them special policemen?

A. Yes.

Q. Did you ever come under that category? Did you personally come under that category, a special policeman?

A. Not in that sense, only in my position as manager that I have that permit to carry a gun.

Mr. Climenko: We cannot hear.

Q. Mr. Turkus has suggested to you that men come into your place of a better class. That was the intimation. Is that so?

A. Average class of people, most of the better class.

Q. You also have experience with men who come in and apply for vaults under assumed names, isn't that so?

A. It is possible they may.

Q. You do not know?

A. We do not know.

Q. In other words, the mere fact that a man comes in well dressed and he makes out an application and he is [fol. 1084] well spoken, you have not any way to find out that that man is giving even his right name and address?

Mr. Turkus: I object to this, has nothing to do with the qualifications.

Mr. Barshay: It may, Mr. Turkus.

Mr. Turkus: All right, I still object.

The Court: Sustained.

Mr. Barshay: Exception.

By Mr. Barshay:

Q. Did you ever personally come across men who had later developed to have been customers of your company under fictitious names for the purpose of concealing the real truth of their identity?

A. I know there are such people.

Q. You do know?

A. Yes, sir, who use fictitious names.

Q. So that the experience you had in dealing with that type of person you shall use, if such person or a like person should take the stand and raise his hand to tell the truth?

Mr. Turkus: I object to it. There is nothing in the statement of the prospective salesman that would warrant the embracing of those facts.

The Court: Sustained.

Mr. Barshay: Exception.

Q. In other words, you don't take a man's word merely because he gives it or raises his hand to give it; isn't that so?

A. That is true, yes, sir.

[fol. 1085] Q. You said you knew Mr. Morehead. He is the head of the Indictment Bureau. Are you an intimate friend of his?

A. Well, I know him well. He is a member of my church.

Q. A member of your church?

A. Yes.

Q. Is he a member of your lodge?

A. No, sir.

Q. Is he a member of your club?

A. No.

Q. Did you know him a long time?

A. Probably two years, a year and a half.

Q. Then you know him since he has become Assistant District Attorney?

A. Yes, I knew that he was in the law business, and recently I learned that he was in the District Attorney's office.

Q. Did you ever talk to him about his cases or his work?

A. No, sir.

Q. Did you ever speak to him about the work of the District Attorney's office at your church?

A. No, sir.

Q. Did you ever hear him lecture at any time or any place?

A. Not at all, just in church matters, that is all.

Q. Of course you know, sir, that the presumption of innocence is given to every defendant?

A. Yes, sir.

Q. And I take it you know, too, a man of your experience, that the Grand Jury may indict an innocent man?

A. Yes, sir.

Q. You believe that, don't you?

A. Yes, sir.

Q. And you know that Mr. Buchalter is presumed innocent of the charge against him as any human being alive today in any place?

A. Until he is proven guilty, yes, sir.

[fol. 1086] Will you give him that presumption?

A. Yes, sir.

Q. Have you read about the case?

A. No, not at all.

Q. Never?

A. No.

Q. You now have learned that it is a highly publicised case?

A. Yes, I came here on August 4th and was told, instructed by the Judge to, not to read or to listen to anything about it.

Q. Would you mind telling me the papers you read?

A. Ordinarily the *Times* and the *Sun*, more often, occasionally the *Telegram*.

Q. And in any of those papers did you ever read about this case at all?

A. No, sir.

Q. Before you came here?

A. No, sir.

Q. Did you ever hear the name of my client before you came here?

A. Just casually.

Q. Did the mention of his name cause an unfavorable impression?

A. No, sir.

Q. With you?

A. It could not, because I did not read anything about this case. I did not know anything about the case except that there was a murder five years ago.

Q. It is an alleged murder with respect to our clients.

A. I beg pardon.

Q. You understand that?

A. Yes.

Q. It is an alleged charge of murder with respect to our clients.

A. That is true, yes, sir; I should not say it is a murder. [fol. 1087] Q. Because at present it is merely an accusation?

A. Yes, sir.

Q. He said, "Not guilty."

A. Yes.

Q. So that am I to understand that you are free of knowledge of the facts of this case?

A. Positively, yes, sir.

Q. And that includes the time you spent here listening to other jurors?

A. I mean except the matter which has been brought out in this court.

Q. And while you were sitting here, sir, did you form any opinion?

A. Nothing at all.

Q. Did you take any sides at all?

A. No, sir. There has nothing been presented. To my mind there has been nothing presented.

Q. So you are free of bias?

A. Positively.

Q. Free of sympathy, free of prejudice?

A. Yes, sir.

Q. And you are ready to become a searcher for truth; is that so?

A. Yes, sir.

Q. That is what a juror is, a person who searches for truth, because in every court every day people take the stand and say that they are telling the truth, but only one side can be. You understand that?

A. Yes, sir.

Q. And as an individual you shall search for the truth where it lies.

Mr. Barshay: May we suspend, sir?

The Court: It is too interesting. Go ahead.

[fol. 1088] Q. Now, Mr. Sillett, sometimes testimony is subject to two interpretations. If the Court shall tell you, not I, if the Court shall tell you that any piece of testimony which is subject to two interpretations, of innocence and of perhaps guilt, you must give it the innocent interpretation, will you follow that law?

A. Yes, sir. If the Court instructs me, yes, sir.

Q. Knowing a little bit about law, I take it that the Court will charge you that, and if he does not, don't do it.

A. Yes, sir.

Q. And if the Court shall charge you that where there is a doubt in your mind which side to accept, the innocent one or perhaps the guilty one, even under those conditions you must accept the innocent one—

A. Yes, sir.

Q. —will you follow that law?

A. Yes, sir.

Q. And if the Court shall tell you that any doubt in this case based upon reason arising from the evidence must be resolved in favor of the defendants at every occasion, will you follow that law?

A. Yes, sir.

Q. Have you formed any opinion with respect to the source of the testimony that shall be presented by the prosecution?

A. No, sir, no impression.

Q. You know by now out of the questions that he himself has asked, that it is not coming from clean sources; you know that?

Mr. Turkus: Just a minute.

Mr. Barshay: I should modify it, Mr. Turkus. You are [fol. 1089] right.

Q. I am not speaking of expert testimony, police testimony or medical testimony. I am talking about that favored group of witnesses whom he shall present who admit out of their own mouths that they are criminals. That is the testimony I have reference to.

Mr. Turkus: I object to the statement implying the use of the word "favored," carrying with it implications.

The Court: You cannot make any specific assumptions as to what the evidence of your adversary may be.

Mr. Barshay: I will leave out the word "favored."

Q. Any testimony.

The Court: You have reached the agreed time. We will continue at ten o'clock in the morning. First the court will be in order while the defendants are remanded. Members of the panel will remember the instructions previously given.

(Whereupon an adjournment was taken to Friday, October 3, 1941, at ten o'clock a. m.)

[fol. 1090] Peo: v. Louis Buchalter. }

Brooklyn, N. Y., October 3, 1941.

Trial Resumed

(At the direction of the Court, the clerk called the following names to fill the jury box: Edward Groden, No. 2718; Leen Wallach, No. 2806; Paul S. Batterson, No. 2697; Alfred J. Cleary, No. 2633; William Farrell, No. 2633; Charles A. Murphy, No. 2796; Leo Ross, No. 2588.)

The Court: All other talesmen may go until Monday morning at ten o'clock. Remember the admonition of the Court.

HARRY SILLETT, No. 2759, of 1716 Avenue T, Brooklyn, New York, resumed the stand and was further examined as to his qualifications to serve as a juror.

By Mr. Barshay:

Q. You said you sat on a jury here once before, sometime in 1935?

A. No, sir, there must be some mistake.

Q. You never sat on a jury?

A. No, sir, I was called several times and was excused for some reason or other.

Q. You applied for an excuse, didn't you?

A. Yes, sir, on August 4th I applied for an excuse on account of my vacation, which started that day, and the Judge, as you know, held over all jurymen until the following morning, and then, as I understand it, the prisoners were remanded until September 15th, and all the jurors were excused and told to be here at that time.

[fol. 1091] Q. So you have had your vacation?

A. Yes, sir, I have had my vacation.

Q. Is your business of such a nature that a long and protracted trial, as this must be, will interfere with you?

A. Well—

The Court: The Court has ruled on that. Counsel may not excuse jurors.

Mr. Barshay: I respectfully except to your Honor's remark that I was seeking to excuse him.

Q. I was trying to find out whether or not your business was of such a nature that if you were here a long time your judgment might be affected.

A. Why, no, sir, personally I feel, as a citizen, it is my obligation to serve as a juror, regardless of the nature of the case, but my employers, I believe, would rather I serve at some other time, if it was convenient to the Court, on the ground of several men being away, one being sick and the others are still on vacation, but as far as I know, that is the only reason. I do not think that would affect me mentally. I don't see how it should.

Q. Your employer's attitude toward jury service will not worry you in the slightest degree?

A. No, sir.

Q. You have heard many times the question put to other jurors about the burden of proof, etc.?

A. Yes, sir.

Q. Having heard those things and having kept them in mind, would you require the defendant to offer any proof in this case?

[fol. 1092] Mr. Turkus: That is a leading question.

Mr. Barshay: I have laid the foundation without repeating it; I wanted to save time in questioning. The gentleman is intelligent.

By the Court:

Q. If the Court should charge you there is no burden of proof upon the defense, will you follow instructions?

A. Yes, sir, explicitly, if the Court should so charge.

By Mr. Barshay:

Q. If the Court should so charge you, and undoubtedly it will, do you, nevertheless, subconsciously or otherwise, expect some explanation to come forth from the defense?

A. I am afraid that if you put that question I will have to have it in connection with the other you previously asked—what was the other question? In other words, can you form it a little differently?

Q. If the Court should charge you that the defendant need not take the stand and because of that no unfavorable inference can be drawn against him, you said you would follow that rule?

A. Yes, sir.

Q. Despite the Court's charge, I ask you would you require—subconsciously or otherwise in your mind, coming to the conclusion that the defendant here ought to make some explanation of the accusation against him?

A. No, sir, I have not anything in my mind on that at all.

Q. So that at no time would you require any explanation [fol. 1093] in dispute of any fact from the defendant?

A. No, sir.

Mr. Turkus: I object; he has already answered.

The Court: Objection sustained.

Q. If the Court should charge you that the burden of proof remained always with the prosecution and that it never shifted in any respect whatever to the defendants, do you think you could follow that law?

A. Yes, sir.

Q. There will be testimony offered here in the nature of testimony tending to corroborate a so-called alleged accomplice. Will you consider the source of that corroborating testimony?

A. I certainly will.

Q. Will you accept it with the same degree of care that you would accept any alleged accomplice testimony?

A. Yes, sir.

Q. Would you look into the motive of the alleged corroborating witness?

A. Yes, sir, I feel I must regard the motive.

Q. What he is getting or what he hopes to get for his testimony. Will you take into consideration the fact that they too led a life of crime before you begin to consider the truth or falsity of the other testimony?

A. Yes, sir.

Q. So if some person says at some place, they shall pick the place, one of the defendants or more made an alleged admission, an oral admission, some years later, will you take into consideration why that testimony is now being given on the stand?

A. Yes, sir.

Q. And who it is that is giving it?

A. Yes, sir.

[fol. 1094] Q. And the treatment he has received?

A. Yes, sir.

Q. And what he said about it when he was asked about it originally?

A. Yes, sir.

Q. If you find that he himself has admitted being a perjurer, you will weigh it more heavily?

A. With due regard, yes, sir.

Q. In other words, you shall search for the truth as each witness takes the stand, no matter who he is?

A. Yes, sir.

Q. You have already heard the rule that one accomplice cannot corroborate another?

A. Yes, sir.

Q. You believe that—you will enforce it?

A. Yes, sir.

Q. Now I ask you if you will take the definition of what "tends to corroborate" means from the Court?

A. Yes, sir.

Q. If the Court shall tell you that physical facts as testified to by an alleged accomplice, for example, someone may say, "Rosen was shot," and then the police came and found the body shot, if the Court shall tell you that alone does not tend to corroborate the commission of this crime with respect to any defendant, if that is all that is shown, you will follow that law?

Mr. Turkus: Tending to corroborate—that is not the law. The law is, "tending to connect," and it has been said repeatedly now, three or four times, to the talesman, and it might give him a confused notion of the law.

Q. Did you understand the question I put to you?

A. Yes, sir.

Q. In other words, the Judge shall charge you that mere [foi. 1095] physical corroboration of a person's testimony, without any other testimony tending to connect the defendants with the commission of the crime, is insufficient. Will you follow that?

A. Yes, sir.

Q. That is what I meant when I said to you if somebody should testify that Rosen was shot, and after that a policeman may come and say, "Yes, I found the body exactly where it was described to be by the alleged accomplice," that does not tend to connect any of the defendants with the commission of the crime; you understand that?

A. Yes, sir.

Q. That is not the kind of corroboration upon which you have a right to convict, and I take it the Court shall so charge you.

A. Yes, sir.

Q. In other words, you shall look for testimony that tends to connect the defendants with participation in this crime.

A. Yes, sir.

Q. And you will be the judge of what that testimony is.

A. Yes, sir.

Q. Its weight, its truth or its falsity?

A. Yes, sir.

Q. Whether a man says he is an accomplice, it will be for you to decide, taking into consideration that heretofore he said he was not, if that should be the fact?

A. Yes, sir.

Q. If a man says he is not an accomplice, you would be the one to decide whether he is or is not?

A. Yes, sir.

Mr. Turkus: I object. The Judge may charge as a matter [fol. 1096] of law that the witness is not an accomplice.

The Court: That is true. You see—maybe I can make it plain—there may be a dispute in evidence as to whether a certain witness was an accomplice or not. There may be evidence indicating he is and there may be counter-evidence indicating he is not. In a case of that kind the Judge cannot decide whether he is or is not. That has to be left to the jury. You understand that?

The Witness: Yes, sir.

By Mr. Barshay:

Q. That is the import of my question, it will be up to you.

A. Yes, sir, I understand that in all things like that I would not receive any special instructions from the Judge.

Q. In that respect you are the judge of the true facts in this case?

A. Yes, sir.

Q. Now, if the Court shall tell you that character has nothing to do in this case unless it is placed in issue by any of the defendants, will you consider it in any respect?

A. Not if the Court instructs me, I certainly will not.

Q. Just at present the character of any person is not in issue.

A. At present, yes, sir.

Q. It may never be in issue at all.

A. Yes, sir.

Q. Will you hold anything against our client because of his past incarceration?

A. No, sir.

Q.—Or his present incarceration?

[fol. 1097] A. No, sir, not in this case.

Q. You know that has nothing to do with the case whatever?

A. Yes, sir.

Q. No matter what you may think of the facts, the issue here to be tried is, "Did he shoot and kill Rosen as alleged in the indictment?" and nothing else?

A. Yes, sir.

Q. Is there a reason in your own mind which would preclude you from rendering an absolutely impartial verdict in this case?

A. Nothing that I know of.

Q. Neither your business, the element of time, your hearing the questions put to prospective jurors, or any other item?

A. No, sir, except the one I mentioned; I feel it would not affect me mentally.

Q. Because you are called as a special juror, I take it you do not feel you owe a special obligation to the community which calls you—I mean, you owe no special obligation to either side in this case?

A. No, sir, only to do what is right according to my intelligence.

Q. You will consider the evidence in this case as against the persons against whom it is given?

A. Yes, sir.

Q. And you won't use it against any other person except as charged by the Court?

A. Yes, sir.

Q. Will you take it and try, from the entire evidence, to draw one complete conclusion, or will you divide it as against each defendant?

A. As I understand it, there are three separate defendants [fol. 1098] and the evidence against them will be considered individually.

Q. Sometimes it may go over a long period of time, when you hear a great number of witnesses testify, and you have to subdivide the testimony—that is why we want intelligent jurors. Do you think, based upon your experience and background in life, you can keep mental track of what is going on with respect to each defendant?

A. Yes.

Q. Because of the number of lawyers present in court, is there any bias with respect to any of the defendants?

A. Not at all.

Q. The number of lawyers has nothing to do with it?

A. No, sir.

Q. Now, a great number of names have been read to you and to other jurors by Mr. Turkus—frankly, I do not know their import now—but unless there is some connection with respect to those people and this case, you will not be influenced by those names?

A. No, sir, there is no connection in this case, as I understand it, unless it shall appear in the evidence.

Q. In other words, I take it that you can strip this case of every bit of atmosphere that may creep into it, willingly or not?

A. Yes, sir.

Q. And get down to the issue?

A. Yes, sir.

By Mr. Cuff:

Q. I don't remember whether you were asked as to prior service as a juror. Have you ever served on a jury?

A. No, sir; I have been called and excused several times, [fol. 1099] mainly on account of vacation.

Q. You have heard, while you sat here waiting to be called and during your examination, something about reasonable doubt.

A. Yes, sir.

Q. If his Honor shall charge you, providing you are selected as a juror, that reasonable doubt is a doubt founded upon the evidence or lack of evidence in the case, will you follow that instruction?

A. Yes, sir.

Q. If you find, after your consideration of the evidence and after listening to every reasonable argument of your fellow jurors, based upon the evidence or lack of it, that you have a reasonable doubt as to any or all of the defendants, do you realize that it is your solemn duty to vote for acquittal in that case?

A. Yes, sir.

Q. By giving the benefit of that doubt to the defendant or defendants?

A. Yes, sir.

Q. Do I have your assurance that you have the courage to do that, not matter how many of your fellow jurors may be against you?

A. Yes, sir.

Q. Do you also realize that it is your solemn obligation, if that reasonable doubt is in your mind as a result of your own study of the evidence, after listening to all arguments of your fellow jurors, you still believe that you are right in entertaining that reasonable doubt, will you adhere to it [fol. 1100] despite the time it may consume or any other consequences?

A. Yes, sir.

Q. You will not be influenced by the fear of being charged with having hung a jury in that case, will you, as has been indicated here?

Mr. Turkus: I object to the gratuitous remark tacked on the rear of it.

The Court: Objection overruled.

A. No, sir.

Q. As you sit there do you have any preconceived idea as to whether or not the defendant shall take the stand?

A. No, sir.

Q. Have you ever had any idea like that?

A. No, sir.

Q. Never expressed any?

A. No, sir, I understand the privilege of law for the prosecuting attorney to do that if he wishes.

Q. I don't understand you.

A. Pardon me, will you shorten the question.

The Court: That is a bar examination question.

Mr. Cuff: I don't think it is a bar examination question, Judge. If you want to listen to the question I think you will find it is not.

The Court: If objection is made, the Court will sustain it.

Mr. Barshay: It is a legal question. I object.

The Court: Objection sustained.

[fol. 1101] Mr. Cuff: Exception.

Q. Have you heretofore expressed any opinion about the conclusion that you would draw in a criminal case if the defendant did not take the witness stand?

Mr. Turkus: Objected to as already answered.

The Court: Objection sustained.

Mr. Cuff: Exception.

Q. Now, if in the wisdom of counsel any one or all three of these defendants should not take the stand, and the

Court, as you understand, should charge that no juror can draw any unfavorable inference against the defendant who does not take the witness stand, would you follow that instruction?

A. Yes, sir.

Q. And will you insist upon your fellow jurors following it as well?

A. As far as in my power.

Q. You heard Mr. Turkus ask the other jurors—I don't know if he asked you—whether they would, if selected, prevent other jurors from discussing the question of punishment. You heard that question while you sat in the box?

A. Yes.

Q. I am asking you to assume the facts I assumed in the question I just asked, whether you would insist upon that situation.

Mr. Turkus: I object to that as having been already answered.

The Court: Sustained. He has no control over the discussion by his fellow jurors; he is responsible only for [fol. 1102] his own discussion.

Mr. Cuff: I was following the customs of the District Attorney, and I know your Honor permitted him to do it.

The Court: I did not hear it and I don't believe it was said. The question, if asked, would be nonsensical, and I would have interrupted it immediately.

Mr. Cuff: Exception.

Q. Are you taking or do you intend to take any active part in the present political campaign?

A. No, sir.

Q. Have you heard any of the members of the District Attorney's staff or the District Attorney himself lecture upon the subject of crime or any part of it?

A. No, sir.

Q. At no time?

A. No, sir—well, pardon me, I must answer truthfully. In 1915.

Q. I mean the present District Attorney or members of his staff.

A. Truthfully, to your question I would say no.

Q. The lecture which you heard in 1915, I assume, left no impression that you still retain?

A. No, sir.

Q. Well, now, during the course of the trial, if you are selected as a juror, you feel you can give your entire attention to the evidence and that when you go into the jury room you can consider it carefully, reasonably, draw the proper inferences from it, and return a proper verdict, uninfluenced by any other consideration except the credible evidence that you find from your examination of the testimony and the law as applied by the Court?

[fol. 1103] A. Yes, sir.

Mr. Rosenthal: I have no questions.

Mr. Barshay: No challenge for cause.

Mr. Turkus: The talesman is satisfactory to The People of the State.

Mr. Barshay: Challenge peremptorily by the defense.

SAMUEL BARRUCH, No. 2795, residing at 446 East 5th Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. The trestle board lists your address at 446 East 5th Street.

A. Yes, sir.

Q. That is in Flatbush?

A. West of Flatbush.

Q. Would that be off Church Avenue?

A. That is between Beverly Road and Avenue C.

Q. Have you lived in Brooklyn for a number of years?

A. Practically all my life.

Q. This trestle board lists your profession or vocation as that of importer.

A. Yes, sir.

Q. What is the nature of the commodity you import?

A. Swiss watches.

Q. Where is your place of business?

A. 15 Maiden Lane, New York.

Q. Have you been engaged in the importation of watches [fol. 1104] for a number of years?

A. Over 25 years.

Q. I take it you are familiar with the charge in this case.

A. I am.

Q. You understand that these defendants at the bar, Buchalter, Weiss, and Capone, are charged with murder in the first degree, the killing of a man named Joseph Rosen?

A. I understand.

Q. Is there anything about the nature of the charge itself which would preclude you or impair your service as a juror in this case?

A. Not at all.

Q. May I go along with the understanding that you have no scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. And that, in so far as you are concerned, the question of punishment will not enter into your deliberations?

A. Correct.

Q. These defendants at the bar are represented by nine lawyers: in so far as Buchalter is concerned, he is represented by three, a former Assistant District Attorney named Barshay, a former Assistant United States Attorney named Wegman, and a man named Jesse Climenko, a partner of Mr. Wegman. Do you know any of those three lawyers?

A. No, sir, not directly; I know of them, though.

Q. You know of all three?

A. Two of them.

Q. Would that be Wegman and Climenko?

A. No, sir, Wegman and Mr. Barshay.

Q. Of course, you have aroused my curiosity.

[fol. 1105] A. It would not have any effect on the case. I happen to know a late cousin of Mr. Barshay's, and being affiliated in the Knights of Pythias I know Mr. Wegman.

Q. Mr. Barshay says you may be confused about his cousin. Which cousin is it?

A. Jack.

Mr. Barshay: He is not my cousin. That must be another family.

Q. Do you and Mr. Wegman belong to the same lodge in the Knights of Pythias?

A. No, sir, but I attend the lodge frequently, and he is past chancellor, the Aerial Lodge.

Q. In a broad sense, you are fraternal brothers in the Knights of Pythias?

A. Yes, sir.

Q. You state that will not affect your judgment in the case?

A. None whatever.

Q. Of course, some men in the District Attorney's office are likewise Knights of Pythias. Do you know Mr. Lustig from the Knights of Pythias?

A. I do.

Q. And Assistant District Attorney Brodsky?

A. No, sir, but I know of him.

Q. The defendant Weiss is represented by former General Sessions Judge Talley; do you know him?

A. No, sir.

Q. And former Assistant District Attorney Cuff.

A. I know of Mr. Cuff.

Q. Is that by reputation?

A. By reputation and hearing him speak.

[fol. 1106] Q. Did you hear him speak at a time when he was an Assistant District Attorney?

A. Yes, sir.

Q. Were those discussions on crime?

A. Yes, sir.

Q. The apprehension of criminals?

A. Yes, sir.

Q. Did these lectures leave any imprint in your mind?

A. None.

Q. Of those lawyers in behalf of Weiss one is former Assistant United States Attorney Kriendler. Do you know him?

A. No, sir.

Q. The defendant Capone has three lawyers, Mr. Sidney Rosenthal, Mr. Leon Fischbein, and Mr. Rosenberg. Do you know any of those men?

A. No, sir.

Q. Do you know any lawyers or any staff assistants in the law offices of these respective lawyers?

A. No, sir.

Q. Do you know indirectly or closely any member of the bar who specializes in the defense of criminal cases?

A. Yes, sir.

Q. Who?

A. Sidney Gottesman.

Q. Did you know Mr. Gottesman at the time he was an Assistant District Attorney?

A. I did.

Q. Have you been friendly with him?

A. For over twenty years.

Q. Have you ever discussed crime and the apprehension of criminals or other prosecutions with Mr. Gottesman?

A. Well, in a general way; nothing specific.

Q. Has he stated cases that he has prosecuted, or discussed them with you?

A. Not in detail; I know when he was District Attorney he was prosecuting one or two cases here two years ago.

[fol. 1107] Q. Did you know Mr. Geoghan, the former District Attorney?

A. Yes, sir.

Q. Intimately?

A. No, sir.

Q. Do you know any other members of Mr. Geoghan's staff?

A. Well, I met quite a few of them.

Q. What I am trying to ascertain, is your relationship with Mr. Geoghan or any member of the staff such that you might, either consciously or subconsciously, resent the fact that this is a murder now being solved that was committed during the time Mr. Geoghan was District Attorney?

Mr. Barshay: I object to the question.

The Court: Objection sustained.

Q. What I want to know is—possibly I have stated it ineptly—will you have any fault to find with this prosecution of a murder which occurred in 1936, September, some five years ago, now that it is being prosecuted by Judge O'Dwyer, the present District Attorney of Kings County?

Mr. Barshay: I object to that.

The Court: Objection sustained. There does not seem to be any basis for it; it is too far-fetched.

Mr. Turkus: May I go into his acquaintance with the former members of Mr. Geoghan's staff any further, or am I precluded?

The Court: You are not precluded.

By the Court:

[fol. 1108] Q. You belong to men's clubs?

A. Yes, sir.

Q. Various public officials have spoken at those clubs from time to time?

A. Yes, sir.

Q. Some of the District Attorney's staff and a former District Attorney's staff?

A. Yes. I don't know just who in this present regime, but it was not only in that organization but in several other organizations I belong to. I am a former member of the Board of Governors of the West Flatbush Democratic Club.

Q. Mr. Geoghan was president of that?

A. Yes, sir, and also of the West Flatbush League.

Q. Aside from hearing Mr. Geoghan at meetings in clubs where he was a speaker, did you know him?

A. Well, from political grounds, campaigns, etc.

Q. You never played cards with him at your house?

A. No, sir.

Q. You have never visited his home?

A. No, sir.

Q. You do not know members of his family?

A. No, sir.

By Mr. Turkus:

Q. Have you any contacts, directly or indirectly, with any persons or firms in the Brownsville or East New York area of Brooklyn?

A. No, sir.

Q. Have you had any in the past?

A. Not for twenty-five years.

Q. Have you any contacts, directly or indirectly, with any persons or firms who do business in the garment district in Manhattan?

A. I know quite a few.

Q. Have you had any contacts with those people?

A. Practically social, counsel.

Q. Are they manufacturers of clothing?

A. Dress goods and ladies' cloaks and suits.

Q. In meeting these people socially did you ever hear discussed the names of Lepke and Currah?

A. No, sir.

Q. Did you ever discuss any of the business in the garment district?

A. No, sir.

Q. Since your name appeared as a prospective salesman and specifically since you received your slip, did anybody speak to you about this case?

A. Only casually—casual comment of being selected as a juror for it.

Q. Would that casual comment be at your place of business?

A. Yes, sir, it could be.

Q. Was it more than at your business or at your home, in regard to jury service?

A. It would be less at my place of business than at my home.

Q. It has been discussed at your home?

A. Yes, sir.

Q. Has there been any discussion about the facts?

A. No, sir.

Q. Or about the defendants?

A. No, sir.

Q. The discussion was limited to the liability on your part of being stuck with jury service?

A. Correct.

By the Court:

Q. There are a good many Swiss watches being imported today?

[fol. 1110] A. Yes, sir, quite a few.

By Mr. Turkus:

Q. As a matter of fact, you cannot supply the demand?

A. No, sir, but the supply is coming in bigger than it has been in the past. They are bringing over everything they possibly can.

Q. I notice you pleaded to be excused at one time when this case was called before the Court. Does that reason exist now?

A. More so now than ever.

Q. Is it of such a nature at present it will affect your deliberations in the case?

A. I think it would keep me on edge, yes, sir.

Q. Do you think it would impair your service as a jurymen?

A. It is a thought, that is all; it may and may not. I could not give you a definite answer that way. It may break up my business completely, and I am in a one-man business.

Q. Of course, both The People of the State and the defendants as well are entitled to one hundred per cent service on the part of the jury in weighing the case. Is there some such matter present in your mind as would impair your service as a jurymen—that is as far as I can go with the proposition.

A. No, sir.

Q. Was it a matter in connection with your business?

A. Yes, sir.

Q. Those people you know in the garment district, as I understand it, are social contacts?

A. Yes, sir.

[fol. 1111] Q. All manufacturers of men's and ladies' garments?

A. Of ladies', principally.

Q. Did you ever discuss with those people the names of any defendant in this case?

A. No, sir.

Q. Or about any investigation conducted by either Thomas E. Dewey, the District Attorney of Manhattan, or Mr. O'Dwyer, the District Attorney of Brooklyn?

A. No, sir.

Q. Did you ever hear any view expressed about the Dewey investigation or the O'Dwyer investigation from people who have occupied positions in the garment district?

A. No, sir.

Q. Have you had any contact of any kind, nature, or description on the Brooklyn waterfront?

A. No, sir.

Q. Or in Manhattan?

A. No, sir.

Q. Have you had any in the past?

A. No, sir.

Q. Has business or any other type of contact brought you into connection with people in the clothing trucking business?

A. No, sir.

Q. Or clothing truckers of any kind?

A. No, sir.

Q. Or teamsters?

A. No, sir.

Q. Is there any familiarity with the name of Murray Weinstein, manager of the Cutters Union, Local No. 4, affiliated with the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Is there any familiarity with the name of Samuel Katz, an officer of the Clothing Cutters Union, Local No. 4?

A. No, sir.

[fol. 1112] Q. Do you know any official of the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Do you know Bruno Belia, an organizer for the Amalgamated? Does that name mean anything to you?

A. No, sir.

Q. Or that of Salvatore Marazzano?

A. No, sir.

Q. Do you know any official of Local No. 240 of the Clothing Drivers & Helpers Union?

A. No, sir.

Q. Either by way of anything you have heard or discussed, is the name of Philip Orlofsky at all familiar to you?

A. No, sir.

Q. Is there any significance in the name of Max Silverman and Wolfie Goldis?

A. No, sir.

Q. Do you have any social contact in Sea Gate, Brooklyn?

A. Well, on very rare occasions.

Q. Do you know a lawyer named William W. Kleinman or David Price?

A. No, sir.

Q. Or a former Assistant District Attorney of Manhattan, a lawyer named Sol Price?

A. No, sir.

Q. Is there any significance in your mind to the name of William Alberts, a one-time bondsman?

A. No, sir.

Q. Does the name of Bellanca or the name of Tosca mean anything to you?

A. No, sir.

Q. Or that of Hymie (Curley) Holtz?

A. No, sir.

Q. Or Abraham Beckerman?

A. No, sir.

Q. In anything you have heard discussed by people you know in the garment district, has the name of Terry Burns [fol. 1113] or the name of Abie Slabo any significance?

A. No, sir.

Q. Or the name of Emanuel Buchalter, or Philip Kowas, are they at all familiar?

A. No, sir.

Q. Or the name of anyone whose surname is Weiss, in the automobile rental business?

A. No, sir.

Q. Coming back to the officers, the Assistants, in charge of the prosecution, do you know specifically Assistant District Attorneys Joseph, Klein, or Turkus?

A. No, sir.

Q. Other than Mr. Lustig, do you know any other member of the District Attorney's office?

A. I have not followed them up; I may know them, but I do not know in what capacity they are today, so I will say no.

Q. Would the fact that you know Mr. Lustig and you enjoy membership in some fraternal organization, the Knights of Pythias, would that in any way affect your deliberation or judgment as a juror?

A. No, sir, none whatever.

Q. The same applies to him as does to Mr. Wegman?

A. Yes, sir.

Q. Are you in sympathy with the enforcement of the Penal Law of the State of New York?

A. Yes, sir.

Q. I did not quite hear what you said to the Judge in regard to some questions that were put to you about hearing lectures on the apprehension of criminals and the prosecution of crime by members of the District Attorney's staff.

A. I heard several of them, because I am affiliated with the West Flatbush League and Men's Club and attend [fol. 1114] meetings of several other men's clubs from time to time.

Q. Were those discussions given recently?

A. I have not attended one in the past eight months or more.

Q. Were any of the lectures you heard upon the O'Dwyer investigation?

A. Yes, sir, one of them was.

Q. Was that given by a member of Judge O'Dwyer's staff?

A. It was.

Q. Was there mention made of cases that had been tried in the past?

A. I do not recall specifically the minute details of it.

Q. Did that discussion leave any impression on your mind?

A. It did.

Q. Would you say the impression amounts to an opinion?

A. It does.

Q. Is it an opinion that is unfavorable to the defendants?

A. At the present moment, yes.

Q. Is it an opinion you can lay aside?

A. I can.

Q. Do you say that with all frankness you can definitely lay aside that opinion?

A. I do, in all fairness.

Q. The People of the State of New York and the defendants at the bar are entitled to a jury which will decide the case on the evidence, free from any opinion or impression that you may have formed from the outside reading of any other matter.

A. I understand that.

The Court: That is not strictly so. It must be an opinion [fol. 1115] as to the guilt or innocence of this charge, or one which could not be laid aside.

Q. In other words, The People of the State of New York want jurors who will sit in this box--and I am sure the defendants want the same thing—who will decide the case on what they hear in court.

A. That is correct.

Q. And you feel now that you can lay aside that impression which you have?

A. I do.

Q. Have you read anything in the press concerning the investigation of Judge O'Dwyer?

A. Yes, sir.

Q. What papers do you customarily read?

A. I customarily read the *Times* and the *Sun*, and I happened to read some instalments in the *Evening Journal* up to several months ago.

Q. Did those instalments refer to Judge O'Dwyer?

A. Yes, sir.

Q. Those were the ones that discussed his career when he came over to America and how he worked himself up?

A. Yes, sir.

Q. In reading any of those articles in the press, have you formulated some impression or opinion with respect to this case?

A. I have formed an opinion as to this case, yes, but, as I said before, I could lay it aside.

Q. Have you heretofore served as a juror in a case?

A. No, sir, none.

Q. Have you been seated in the jury box where you have had the benefit of listening to the Judge's instructions on the law?

A. Many years ago.

[fol. 1116] Q. I take it while you were sitting here you heard expounded by the various attorneys, including the District Attorney, the benefit of the presumption of innocence, the doctrine of reasonable doubt, the burden of proof, and other matters which are essential to a criminal case?

A. I have.

Q. Will you take the law in its every aspect from Judge Taylor?

A. Yes, sir.

Q. Regardless of who the counsel are in the case, regardless of whether it emanates from the prosecutor or the defense table, you will take the law only from the Judge?

A. Yes, sir.

Q. Now, the defendants at the bar of justice in every criminal case are entitled to a presumption of innocence. They are presumed to be innocent until their guilt is established beyond a reasonable doubt, and if you are so instructed will you follow the Court's rule?

A. Yes, sir.

Q. And give the benefit of the doubt to the defendants?

A. Yes, sir.

Q. If you are instructed that the burden of proof is always upon the District Attorney, that it never shifts, that it constantly remains with him from the start to the

finish to establish guilt beyond a reasonable doubt, will you follow that instruction of law given you?

A. Yes, sir.

Q. If you are told by the Judge that the defendants have no burden in the case, they can sit mute and say nothing, leaving the matter entirely up to the prosecution to establish their guilt beyond a reasonable doubt, and that if they do sit mute you can draw no unfavorable inference against them, will you follow those instructions?

A. Yes, sir.

Q. In short, will you give these defendants at the bar of justice every Constitutional, legal right that the law of the land says they should have?

A. I will.

Q. Now, if the prosecution establishes to your satisfaction beyond a reasonable doubt that at this bar of justice there are three men who are implicated in the murder of Joseph Rosen and who killed Joseph Rosen as charged in the indictment, will you hesitate to say so?

Mr. Rosenthal: I object.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

A. I would not hesitate.

Q. There has been some talk by the defense lawyers about apportioning evidence in the case. With respect to such evidence as applies only to one of the defendants, will you take the instructions of law as given you by the Judge?

A. Yes, sir.

Q. Should it develop there has been a conspiracy in which these defendants and others participated in the killing of Joseph Rosen, and certain things were done in pursuance of the conspiracy, will you follow the instructions of law in a manner in which you can allocate the evidence in a conspiracy case?

A. Yes, sir.

[fol. 1118] Q. Do you find any fault with the prosecution of an indictment wherein the case is broken from the inside and the testimony of co-participants in the commission of the crime is used against a defendant?

A. No, sir.

Q. Do you find any fault with the prosecutor for using that type of testimony?➤

A. No, sir.

Q. With respect to the weight you are going to give to accomplice testimony or participants in a crime, will you follow the instructions that may be given you by the Judge?

A. Yes, sir.

Q. Will you take into consideration everything adverse to the accomplice, namely, his character or lack of character, whom he associated with, and what kind of criminals he went out with and the kind of crimes he committed, and every black mark on his slate? Will you consider that in weighing his testimony?

A. I will.

Q. Will you consider every rotten and miserable thing, and every immoral and criminal act he has ever done in his lifetime?

A. Yes, sir.

Q. Will you, too, use your common sense and understanding in finding out whether this accomplice or these accomplices in the murder are telling the truth about these defendants and their participation in the Rosen murder?

A. I will.

Q. Now, in your every-day business, as one of the lawyers pointed out, you use various tests to apply to people you [fol. 1119] come in contact with?

A. Yes, sir.

Q. Will you keep in mind we are not dealing with wages or bankrupts, but we are dealing here with a murder case?

A. Yes, sir.

Q. And that there will be some kind of characters whom you do not ordinarily meet in your every-day life?

A. I understand.

Q. Will you give your God-given brains and understanding in finding out, "Is this individual or accomplice telling the truth about these defendants in connection with the Rosen case?"

A. Yes, sir.

Q. Even if you believe the accomplice, the Judge will tell you, even if you believe everything he says is Gospel truth, and even if you believe his testimony that these defendants were mixed up and participated in the killing of Rosen, even if you believe that, if there is no corroboration, you have got to throw the case out of the window.

A. Yes, sir, I understand.

Q. Will you take the law exclusively from the Judge as to what constitutes corroboration?

A. I will.

Q. If the Judge tells you the District Attorney does not have to corroborate by his witnesses each and every detail of the charge, will you accept that law?

A. Yes, sir.

Q. If he tells you that corroboration may be deemed sufficient by a juror if it tends to connect the defendants with the commission of the crime, will you follow that instruction of law?

A. I will.

Q. Will you endeavor conscientiously to apply that instruction of law to the facts in this case?

A. Yes, sir.

Q. As has been discussed with the other talesmen, there is only one inquiry here: Are these defendants at the bar guilty of murder in the first degree, the murder of Joseph Rosen, on Sunday, September 13, 1936? Do you understand?

A. Yes, sir.

Q. That is going to be your job, to look at this evidence and find out, Are they guilty or innocent?

A. Yes, sir.

Q. If any defense is invoked, whether it be alibi or any other defense, will you take the law from the Judge?

A. Yes, sir.

Q. Whether the defendants put in a defense or do not, if the Judge charges you that the burden of proof remains with the District Attorney, will you follow those instructions?

A. Yes, sir.

Q. Is there anything so far that I have failed to bring out by my questioning which goes to your ability to be a fair, just juror in this case?

A. Nothing that I know of.

Q. Will you, if accepted as a juror, use common sense and understanding in weighing the issue in the case?

A. Yes.

Q. Will you listen to reasoning and common sense and discussion by the other jurors?

A. Yes, sir.

Q. And will you talk the issue over with them in a common-sense, calm manner?

A. Yes, sir.

Q. Will you, if accepted as a juror in this case, endeavor to render a verdict that will be in consonance with justice?

A. Yes, sir.

[fol. 1121] Q. And will you, by your verdict, endeavor to do justice?

A. Yes, sir.

Q. Can I proceed now with the understanding that if you and your conscience are satisfied beyond a reasonable doubt that at this bar of justice there are Buchalter, Weiss and Capone, who are guilty of murder in the first degree, there isn't anything in your background or anything in your present business connections or any other connection which would preclude you from being fair as a juror?

A. No.

Q. You will have no fear or hesitation or reluctance, if you are convinced of guilt, to announce your verdict?

A. Not at all.

By Mr. Cuff:

Q. You said you heard me talk. Could it have been another Assistant District Attorney?

A. I think it was you—in a little church on Beverly Road and East 8th Street, some years ago.

Q. I don't remember it, but you may be right.

A. Maybe I am wrong, too.

Q. Were there slides used?

A. Yes, sir, there were.

Q. Then I think I may say you must have another Assistant District Attorney, Mr. Kopf, in mind. His name is pronounced, generally, like mine.

A. I remember the appearance, that is why I don't think of the name or the face.

Q. In those days we were of the same appearance, but [fol. 1122] not now.

A. All right.

Q. Might I inquire the name of the Assistant District Attorney that you say you heard discuss or lecture or talk about the O'Dwyer investigation?

A. I do not recall it.

Q. Was it Mr. Turkus?

A. No, sir.

Q. How long ago would you say that was?

A. About eight months ago.

Q. And that, you say, left a profound impression upon your mind?

A. It did at the time.

Q. Would that impression—and I assume it continues to this time—would that impression militate against your rendering a verdict that you say would do justice in this case?

A. It would not militate, no; it would not affect my rendering a fair verdict.

Q. Would that impression cause you to accept less proof from the District Attorney than you would otherwise require because of hearing him?

A. The answer is yes or no.

Q. In other words, there is a doubt in your mind?

A. There is a slight doubt in my mind.

Q. What I gathered from your answers to Mr. Turkus' questions was that you are the type of juror that under no circumstances would permit an unjust verdict to be rendered, and certainly you would not vote for one?

A. That is right.

Q. So, if you are selected as a juror in this case and you take your oath as such, you will live up to that oath conscientiously throughout this trial, during the time that you are deliberating in the jury room, and consider the evidence, and until and when you render your verdict?

A. I would.

Q. Now, having heard a good deal about reasonable doubt, may I presume you have some idea, personally, as to what reasonable doubt is?

A. I think I have.

Q. And if there is any doubt about that in your mind, you would certainly take the law or definition of reasonable doubt that his Honor will give you when he instructs the jury?

A. I shall.

Q. And you will apply that definition constantly and persistently throughout your deliberation?

A. Yes, sir.

Q. You have said you would not hesitate to vote a Guilty verdict if convinced beyond a reasonable doubt. I want to ask you this: If, after considering the evidence and listening to all of the reasonable arguments of your fellow jurors, based upon the evidence or lack of it, you reach a conclusion in your mind, honestly and conscientiously, that there

is a reasonable doubt as to the guilt of the defendants or any one of them, is there anything that would prevent you from giving the benefit of that reasonable doubt to the defendant or defendants and voting "Not Guilty"?

A. Absolutely no.

Q. Do you say now that if you do have a reasonable doubt you will so vote?

A. I will.

Q. And that you will entertain and hold that reasonable [fol. 1124] doubt until you are convinced by reasonable argument that it is not?

A. Yes, sir.

Q. You realize that is your sworn duty?

A. Yes, sir.

Q. And that it is part of the law of this State that you say you are in favor of administering?

A. Yes, sir.

Q. You will not let fear of criticism or weight of numbers against you, or time, or anything else, interfere with your voting according to your conscience?

A. Will you please repeat the question?

Q. I will reframe the question: If you are selected and you have reached the point where you find, upon your consideration of the evidence and after listening to arguments of your fellow jurors, such arguments as are reasonably based upon the evidence in the case, you have a reasonable doubt, have I your assurance that you will adhere to that reasonable doubt despite fear of criticism, despite the number of jurors that may be against you, or for any other reason?

A. You have.

Q. Referring to accomplices that Mr. Turkus asked you about, I assume you know now from listening to the other statements made, that you must weigh the testimony of accomplices with extreme care?

A. Yes, sir.

Q. And you will do so?

A. I will.

Q. You know that is your duty, to examine into the motive that may inspire the accomplice to testify?

A. I do.

Q. The hope of reward that he may have in his mind when [fol. 1125] he so testifies?

A. Yes, sir.

Q. You realize that also must be taken into consideration?

A. Yes, sir.

Q. And if you find that an accomplice has committed crimes for which he has never been indicted or punished, and that the lessening of punishment may be afforded to him by the use of his testimony, you will take that into consideration in weighing the credibility of that witness?

A. I will.

Q. Of course you realize, I assume, that the question of credibility is one that is solely within the province of the jury in the case, and if his Honor tells you that is the law, you will take that?

A. I will.

Q. So I take it that, if you find that any witness, even an accomplice or other witness, has had a criminal record, including perjury and other crimes, that you will consider that record as bearing upon his credibility and his ability to tell the truth in this case?

A. I will.

Q. Merely because he raises up his hand and swears to tell the truth does not convince you he is going to tell the truth?

A. No, sir.

Q. You know that men have lied under oath, too?

A. I do.

Q. In a word, you will consider everything that is material in appraising the credibility of this witness, the accomplice and the corroborating witness alike?

A. Yes, sir.

Q. Now, this opinion you said you had you also said you [fol. 1126] could lay aside—— I withdraw that.

Q. I take it that you know that the law with respect to the presumption of innocence is not a mere composition of words, but that it is a very substantial right that inures to the benefit of every defendant in a criminal case?

A. I understand.

Q. And that it cannot be and must not be tossed aside lightly by any juror?

A. I realize that.

Q. If his Honor should charge you that you must give that presumption of innocence or the benefit of that presumption of innocence to these defendants, not only when the testi-

mony is being taken but every minute during your deliberation in the jury room and until you have reached a conclusion that the defendant or defendants are guilty beyond a reasonable doubt, will you adhere to that?

A. I will.

Q. Well, the opinion you said you entertained, in answer to Mr. Turkus's question, will that prevent you from giving the benefit of that presumption one hundred per cent to each of these defendants?

A. Not as I know.

Q. I gather from that answer that you have not laid it aside yet.

A. I cannot see how one can.

Q. Do I understand you to indicate by that that you are looking for some evidence that will justify its removal?

A. Yes, sir.

Q. And you will have to have such evidence?

A. Corroboration of evidence, I would say.

[fol. 1127] Q. You mean you would have to have some evidence produced by the defendants before you would lay aside that opinion, is that right?

A. If the line is drawn that fine, my answer would have to be that I would say yes. Will you repeat the question?

Q. You mean you would have to have some evidence produced by defendants before you could lay aside that opinion; is that right?

A. I will say no, then.

Q. You would not require that?

A. I think I get my thought confused.

Q. I will ask it again: If you are sworn as a juror on this case, you will take your seat in the jury box with that opinion in your mind?

A. No, sir.

Q. You understand the minute you are sworn, out goes that opinion?

A. Yes, sir; that is correct.

Q. Just be perfectly frank with me, that is all I ask, because I am trying to ascertain the state of your mind, and it is very, very important to my client and the other defendants. Do you really believe you can do that?

A. I can. I do believe it.

Q. You know, don't you, that if you go into the jury box with any such opinion as you have indicated, it will prevent you from enforcing the law as his Honor will give it to you?

A. I appreciate that.

Q. You will not permit any such condition to exist?

[fol. 1128] A. I will not.

Q. So I have your assurance definitely now that if you are selected there is nothing that will prevent you from laying aside that opinion and giving these defendants the benefit of every law, of every right they are entitled to on this trial?

A. That is correct.

Q. And you will do that throughout?

A. Yes, sir.

Mr. Cuff: No challenge for cause.

By Mr. Clinenko:

Q. You do not know me at all?

A. No, sir.

Q. You mentioned the fact that you might know my partner.

A. Yes.

Q. The fact that he is within the scope of your acquaintanceship would not cause you to change your opinion one way or the other, one iota?

A. No, sir.

Q. You understand that were you to be chosen as a juror in this case, you would take a solemn oath to do justice impartially?

A. I understand.

Q. So that that casual acquaintanceship, once you took the oath, would assume so unimportant an aspect in your mind that it would not be of any consequence to you?

A. That is correct.

Q. That being so, the fact that you may belong to one political party or another—I am not interested in which one—that would also be unimportant to you?

A. Yes, sir.

Q. The fact that you may have an interest in the victory [fol. 1129] of one party or another, would also become a matter of absolutely no importance in comparison with your discharging your duty under oath as a juror?

A. None whatever.

Q. Is that correct?

A. Yes, sir.

Q. So that whether or not you know anybody in the regime of this particular District Attorney is a matter which you realize is of absolutely no importance whatever?

A. That is correct.

Q. Now, you have said that you have some impression about this case, that you had read certain articles?

A. Yes, sir.

Q. You had read certain articles, as I recall your answers, in the New York *Journal* concerning Mr. O'Dwyer, whom Mr. Turkus calls Judge O'Dwyer?

A. Yes, sir.

Q. And those were articles which were in praise of that gentleman?

A. Yes, sir.

Q. Now, of course, I am not by any implication in the questions of mine, trying to disparage or belittle Mr. O'Dwyer, but you realize that there are matters of opinion and also matters of fact which are set forth in daily periodicals which we buy and read?

A. Yes, sir.

Q. And if you want to find out whether a certain ship is going to leave at a certain pier, you look at the ship news, as a question of fact; you know it must be recorded one way or the other.

A. Yes, sir.

Q. And so with respect to whether or not a particular [fol. 1130] piece of property or a particular security was sold at a particular price. There is no latitude in the newspaper business for presenting that except as it happened?

A. Yes, sir.

Q. Then you realize also that newspapers carry in them matters which are not necessary to be reflections of a specific fact?

A. Yes, sir.

Q. And you know that many times newspapers embark upon the presentation of a series of articles having nothing to do except with matters of opinion?

A. Yes, sir.

Q. And very frequently you realize that that series is presented really for the purpose of helping the circulation of the newspaper?

A. Yes, sir.

Q. And you realize that in order to advance the circulation of a newspaper very frequently a newspaper, in order

to go along with that publicity program, deviates from the truth? You realize that?

A. No, I don't realize that.

Q. You do realize that very frequently there is an effort on the part of a newspaper to make things look more florid than they actually were?

A. Yes, sir.

Q. And I am talking now about that aspect of newspaper comment which deals with matters which are not matters of specific fact.

A. Yes, sir.

Q. And you as a gentleman who has lived to maturity in this community know there are certain things in a newspaper which have to be taken as accurate facts and certain things [fol. 1131] which must be taken with a large grain of salt?

A. Yes, sir, that is so.

Q. In the ordinary exercise of your intelligence, in the reading of a newspaper you discriminate between that which is set forth in the newspaper as a fact and that which is put in there as an opinion of the editor or the policy of the editor, or for the purpose of stimulating the sale of the newspaper?

A. That is so.

Q. So that whether or not you have read, with respect to the laudatory articles about Mr. O'Dwyer, you realize that were you to be chosen as a juror in this case it would be your duty to listen to the facts as they are presented in this case and discriminate about the testimony, as to which was true or false, and to follow that mental process independently of anything you might have read in the Hearst papers?

A. That is right.

Q. And the fact that Mr. Hearst has this opinion, or his editors had that opinion about a particular man and a thought that on that particular morning in July it was of interest to relate certain facts about an office holder, and those facts were taken from his career and occurred twenty-five years ago, that would have nothing to do with the solemn discharge of your duty as a juror?

A. No, sir, none whatever.

Q. And that would be the truth as to whether or not you had ever shaken hands with a fellow named Bert Wegman [fol. 1132] or had not shaken hands with a fellow with my name?

A. Yes, sir.

Q. Nothing to do with the case?

A. That is right.

Q. So, were you chosen as a juror, any opinion you might have gained from reading these articles would be dispelled from your mind once you were told that was your duty?

A. Yes, sir.

Q. May I take it that the same answer would apply to anything else that you might have read about this case?

A. You may.

Q. Now, Mr. Turkus has asked you whether or not you are in favor of the enforcement of the Penal Law and the policy of the Penal Law in the State of New York. Of course, there is only one answer you can give.

A. Yes, sir.

Q. And that is you are.

A. Yes, sir.

Q. We all are.

A. Yes, sir.

Q. You have not heard anybody say no——

Mr. Turkus: I object. Somebody say no.

Mr. Climenko: I withdraw the question.

By the Court:

Q. Do you mind saying where you spend your vacation?

A. I spent my vacation almost all over the country; I am a traveling man.

Q. What particular resort?

A. No particular resort. I travel. I may be in Chicago, the Middle West, or up in Niagara Falls, around Buffalo; there is no particular place. I don't go anywhere at any specific time; I may occasionally go up to the Adirondacks or the Catskills.

[fol. 1133] Q. Sullivan County?

A. Yes, sir.

Q. What place?

A. Sullivan County, in Wurtsboro, and I go further up around Albany and Totem Lodge.

Q. And on the Jersey Coast?

A. Atlantic City.

By Mr. Climenko:

Q. While we are on the subject, did you say to Mr. Cuff that you did not see how you could set aside the opinion you have?

A. I don't believe he understood the answer that way. I did not draw that so fine. I understood the question was if I had formed an opinion, and I said yes, but that I could set it aside.

Q. Would that be your attitude, that you would set it aside?

A. Absolutely.

Q. Talking now about the policy of being in favor of the enforcement of the Penal Law of the State of New York, you don't presume—you are not a lawyer and you are not a student of the philosophy of law—you don't presume to be able to say, as you sit here now, what are all of the meanings of that phrase?

A. I don't.

Q. And supposing you were told that one of the meanings of that phrase that each defendant is presumed to be innocent on the charge alleged against him in the indictment, would you be able to accept that concept of the law?

A. Yes, sir.

Q. Supposing you were told also that it is part of the enforcement of the Penal Law, the policy of the State of [fol. 1134] New York, that an indictment has no significance as far as evidence—the fact that an indictment has been handed down does not mean that there is even an iota of proof that any of the defendants are in any way guilty of the charge set forth in the indictment—would you have any hesitation in accepting that statement as the policy of the criminal law of this State?

A. I would not have any hesitation.

Q. Supposing you were told further that it is also a part of that policy of enforcement—public policy—of the Penal Law of the State of New York, that a defendant who is charged with the commission of crime is presumed to be innocent even though charged, and is under no obligation to adduce in the trial anything whatever in his own behalf, would you have any difficulty in following such instructions?

A. None whatever.

Q. In other words, your interest as a proposition of law with the mechanics of trying a criminal case in accordance with the public policy of the State of New York is that after a jury has been convened it is the burden of the District Attorney to prove guilt beyond a reasonable doubt,

and if he does not do so it is a solemn obligation of each and every juror who entertains a reasonable doubt to vote for acquittal and to adhere to that vote unless his doubt is removed by intellectual persuasion of his fellow jurors? You would have no difficulty in following that instruction?

A. I would not.

Q. You see, the public policy of the State on the law is [fol. 1135] that there is no burden on the part of any defendant to call any witness or to do anything in the course of the trial of a case, so if this defendant or all of them refrain from calling witnesses, would you be prejudiced against any one of the defendants?

A. None whatever.

Q. So you would not entertain an opinion adverse to any defendant once the trial of a case began?

A. Correct.

Q. Because you understand if you did entertain such an opinion your state of mind would be in direct conflict with the enforcement of the policy of the Penal Law of the State of New York?

A. I appreciate that.

Q. If you were to go in the jury box with an opinion at the inception of the case, you would be in a condition where your mere presence would be a violation of that oath?

A. I understand that.

Q. So you could not take the oath unless you were prepared to say with understanding that all of the defendants are presumed to be innocent—you are willing, not only to listen to that proposition of law, but to live by it in your intellectual process as you sit in the jury box—believing they are innocent—that is your duty; and you must continue to believe that they are innocent unless proof of guilt surpasses any reasonable doubt?

A. I understand that.

Q. You have no quarrel with the policy of that law?

A. No, sir.

[fol. 1136] Q. That is the same Penal Law Mr. Turkus asked you whether you were in favor of supporting.

A. Yes, sir.

Q. And then you may be instructed that a reasonable doubt is one which springs from the exercise of your intellect in relation to the failure to prove facts during the course of the trial—

Mr. Turkus: I object. That will not be the instruction.
The Court: Objection sustained.

Q. Supposing you were told a reasonable doubt is a doubt for which you can ascribe a reason, and that you must acquit if, within that definition of reasonable doubt, at the conclusion of the case, the conclusion of your deliberations, you do entertain a reasonable doubt; would you have any difficulty in following that?

A. No, sir.

By the Court:

Q. You spoke of the Catskills. Have you any objection to telling us what resort in the Catskills you have been at?

Mr. Climenko: I object to that question.

The Court: Objection overruled.

A. I stopped at the Mamakating Country Club.

Q. I am talking about the Catskills.

A. That is what I mean.

By Mr. Climenko:

Q. There is nothing about any place where you have ever [fol. 1137] stopped on a vacation which in any way, as you sit here now, would interfere one way or another with the proper discharge of your duties as a juror?

A. None whatever.

Q. Now referring again to this question of being in favor of the enforcement of the Penal Law of the State of New York, you realize—I withdraw the question.

Q. Supposing you were instructed as a matter of law that you as a juror were the sole judge of the facts. Would you be able to follow that instruction?

A. I would.

Q. Supposing you were instructed as a matter of law by the Court—all instructions may come only through Judge Taylor—supposing you were instructed by the Court that, as a juror, it would be your duty to pass on the credibility of evidence, which means to decide what you believe and what you do not believe, and that, after having done that, you were under a reasonable obligation in the course of intellectual conversations with your fellow jurors, to arrive at a verdict, but if you cannot, if they cannot dissuade you

from your opinion by the exercise of argument, it was nevertheless your obligation to adhere to your opinion, even though you may be in a minority, would you have any difficulty in adhering to your minority opinion, even though it may be a minority of one?

A. I would hold to my opinion.

Q. You realize that would be your obligation as a juror?

A. Yes, sir.

[fol. 1138] Q. And you realize that it would be part of public policy in enforcing the Penal Law of the State of New York that you, as a juror, cannot divide your obligation with eleven other gentlemen in the box, but that you hold to a separate, individual obligation; you understand that?

A. Yes, sir, and I realize it.

Q. That would be part of your job?

A. Yes, sir.

Q. You entertain no hesitation about your ability to discharge that part of your job?

A. I do not.

Q. You realize, I think, by this time that the business of a juror is to follow the testimony of witnesses and to test that testimony in accordance with instructions of law which the court may give you at the end of the case?

A. Yes, sir.

Q. And to arrive at a conclusion in accordance with those instructions about the testimony that you have heard?

A. Yes, sir.

Q. So that, essentially, your job as a juror and that of everybody else in the jury box is for you to use your mind as to the believability or non-believability of evidence?

A. That is correct.

Q. Now, in doing that, you would not be assuming a job you've never done before, would you? You have got to weigh the believability, honesty, and probable accuracy of what is told you every day in your life?

A. Yes, sir.

Q. Every time somebody presents you with an order and a representation about his capacity to pay for what he [fol. 1139] want, you are passing on believability?

A. Yes, sir.

Q. And you do it with a fair degree of caution, as you must in business matters?

A. Yes, sir.

Q. You realize that in this particular case the issue, and Mr. Turkus has told you that, is a serious one?

A. I do.

Q. And certainly as serious as any transaction you have ever handled in your normal life—you would be willing to concede that?

A. More so.

Q. That being so, in passing on the credibility of persons who may take the stand, you will exercise all of the care and caution that you would in the discharge of matters respecting your own business affairs?

A. I would.

Q. Because, if the Court should instruct you that every person who testifies must be approached by you, as a juror, with particular care, you would follow that?

A. Yes, sir.

Q. Now, should it appear that a witness is presented by the District Attorney, would the fact that he is called by the District Attorney, to your mind, entitle him to an easier or larger degree of credibility than if he was a witness called by the defense?

A. No, sir, not for a minute.

Q. You realize that accuracy or inaccuracy or falsity or honesty of a witness is not to be decided by any such arbitrary standard as that?

A. I understand.

Q. Supposing that in the course of the trial a witness is called for the defense and he says, "I have committed [fol. 1140] perjury," you understand what that is?

A. Yes, sir.

Q. Perjury is false swearing under oath?

A. Yes, sir.

Q. Supposing that man takes the stand and he says, "I committed perjury before," will you take that fact into account in deciding whether or not you can believe him this time?

A. I would take it into account very seriously.

Q. Very heavily?

A. Yes, sir.

Q. That is like a fellow who gives you a false financial statement in the past and now wants you to believe the financial statement he is presenting today?

A. Correct.

Q. Supposing a man takes the stand and says, "I swore to tell the truth before," but you can see from his situation that he has every inducement in the world to tell the story he does tell, whether or not it is the truth, you understand?

A. Yes, sir.

Q. Suppose that that man has, among the inducements which obviously work upon him, the desire to curry favor with a governmental office-holder who holds the fate of that man, would you take into account that inducement?

A. Yes, sir.

Q. To depart from the truth, and would you decide whether or not he did tell the truth?

A. I would.

Q. Supposing you find one of the inducements which have operated upon that witness is the fact that he has received favors from a governmental office-holder, and that that governmental office-holder has discriminated in his favor in the recent past, would you take that into consideration [fol. 1141] when you pass upon whether or not you can believe that man?

A. I would.

Q. Now, after considering this matter in those few aspects that I at least attempted to bring to your mind, do you believe you could act as an impartial juror in the trial of this case?

A. I do.

Q. Without any prejudice against anybody in the case?

A. Without any prejudice.

Q. Without any favor for anybody in this case?

A. Correct.

Q. The mere fact there is a political campaign about starting is one of those ridiculously unimportant things which would have nothing to do with you?

A. It is unimportant.

Q. Were you to act as a juror in this case?

A. That is right.

By Mr. Rosenthal:

Q. There is one thing that is very important. You said you read some articles in the *Journal*?

A. Yes, sir.

Q. Were any of those articles, without mentioning the names, directed to the mentioning of the names of any of these defendants on trial?

A. They did.

Q. You say that you also listened to a lecture of some character around eight months ago?

A. Yes, sir.

Q. Without going into the nature of the lecture, did it in any wise apply to the supposed investigation of crime since Mr. O'Dwyer became District Attorney?

A. Yes, sir, it did.

Q. You have also honestly stated that because of what [fol. 1142] you have heard an impression has been left in your mind?

A. It has.

Q. And that impression which you have is one which is detrimental to one or more of the defendants?

A. That is correct.

Q. Now, nobody can read the mind of any prospective juror—that is clear?

A. Yes, sir.

Q. We must depend upon a man taking oath when he goes into the jury box to do a certain thing, and then his being straightforward and fearless and honest enough to carry it out.

Q. That is clear?

A. Yes, sir.

Q. I am going to ask you, if you would give that oath to act as a fair and impartial juror, would what you have heard or read be of such a nature—I will put it in plain terms so that you can understand it—Have you ever served as a juror before?

A. No, sir.

Q. Well, now, assuming that you have not served on a jury, I am giving you this hypothesis so you can understand. You know nothing about the individuals involved and have heard nothing; is that clear?

A. Yes, sir.

Q. Would your state of mind at the present time be such that because of what you have read or heard, the nature of the evidence or the quality of the evidence that would have to be produced in this particular case would be different than in the hypothetical case which I have mentioned, in which you have never heard about either defendant or [fol. 1143] anything about any supposed activity?

A. It would not—as a juror I would dismiss all my opinions and thoughts.

Q. Of course, when you were questioned by Mr. Climenko—I supposed the newspaper men were pleased at your answer—you said you believed in the truth of what you read in the paper.

A. Well, in substance, yes, sir; not every line of it.

Q. Of course, have you, during your experience, read something in the newspapers, either the death of somebody that the next day you saw walking on the street, or the serious injury of somebody who had a leg broken and was carted away, and the next day you saw them walking on the street, or a traffic accident happening, a trolley car running into a truck and the truck into a pusheart and the pusheart running over somebody else—have you ever read those things in the newspaper?

A. There are some instances you mention, yes, sir.

Q. In other words, you read in the newspaper, where it was not confined to particular things, a conception of what was reported as a true state of facts?

A. Yes, sir.

Q. When you are in a court of law, never having served as a jurymen before, you do not substitute what you read in the newspaper for what you hear under oath on the stand?

A. That is true.

Q. Of course, you know there are many men, and I want to find out if you are on one side or the other, who form an opinion from what they read in the newspaper, and that [fol. 1144] opinion becomes so fixed in their mind that they honestly feel, if they seat themselves in the box, that as they are listening to the evidence either their mind will be more receptive to listening to a particular type of evidence than to listening to another kind because of what they read. Now, I take it your mind is not such?

A. It would not be such.

Q. You have noticed from the time you sat here a great many men state their attitudes and express their thoughts, who have been influenced by either what they read to such an extent they feel they would be biased jurymen one way or the other, and we heard one of them say that he would not believe an accomplice under oath. Were you in court then?

A. No, sir.

Q. The District Attorney challenged the man, and rightly so, because that is the opinion which he formed.

A. Yes, sir.

Q. You heard other men when they were in court say that because of what they read they could not conscientiously, on their honor, sit in the jury box, without allowing it to weigh on their mind.

A. I heard that.

Q. Now, your state of mind is such that if called or accepted, whatever the impression is you may have formed by what you read, it can be absolutely set aside and you would not in any wise indicate or discuss in the jury room anything other than what has been legal evidence in the case?

A. That is right.

Q. Now, I take it your answer is one hundred per cent candid, because you have already tried to be excused as a jurymen.

[fol. 1145] A. And I still would like to be.

Q. So that it is not with any desire to evade duty, that you are making your answers with all honesty and candor?

A. Yes.

Q. Let me come to one or two other questions. I will make it brief. I will ask you whether you heard me express the statement to the other jurymen—if you heard me state to the other men the question as to the District Attorney's attitude in a criminal case, to furnish, in addition to the evidence furnished by the so-called accomplice, other evidence which would tend to connect one or more of the defendants with the crime.

A. Yes, sir, I heard that.

Q. Now, then, it may be in this case that what the District Attorney calls that "other evidence" will be some individual who may state he, that individual, that at some time after that crime one or more of the defendants said to him, "I (the defendant) admit to you (the witness) that I (the defendant) had something to do with the crime." Is that clear?

A. Yes, sir.

Q. Now then, that man may further state, "Although I have committed numerous crimes, including murder, as far as this particular crime is concerned, I had nothing to do with it"—is that clear?

A. Yes, sir.

Q. If such is the case, two things may happen: either the Judge may say to you as a matter of law that the man is

not an accomplice as a matter of law, but in view of what has been testified to by him on the stand he may in the opinion [fol. 1146] of the jury become an accomplice as a question of fact. Is that clear?

A. Yes, sir.

Q. Now, the meaning of the Court, if such statement is made, is that you jurymen have a right to go into your jury room and to analyze who and what he is, where he was on the particular night and what he did, irrespective of his denial of the actual complicity—actually was an accomplice. Is that clear?

A. Yes, sir.

Q. You see that is differentiated from the other type of accomplice where the Judge does not leave anything to the jury, but says to the jury, "I charge you as a matter of law this man is an accomplice."

A. Yes, sir.

Q. Now, if, after going into the jury room and analyzing the testimony of this particular individual, if such individual is called, you determine he is an accomplice and that there is no other evidence of independent nature tending to connect the defendants with the crime, as the Court tells you the law to be, would you hesitate under a state of affairs of that character to find a favorable verdict for the defendants and acquit them?

A. I would not.

Q. Even assuming you go into your jury room and you say to yourself, "Well, I am not convinced the man is an accomplice, but let us see who and what he is, and what he has to gain, what his motive may be. This man admits he has committed six murders, has he been indicted, has he been [fol. 1147] tried? He admits he committed perjury on the stand too, under oath, in a court of similar jurisdiction; he admits he has been living in hotels at the expense of the State, or out on Long Island playing baseball and other things—currying favor—what motive has that man in saying that these men are connected rather than he himself, with the crime?"

A. I would weigh that.

Q. And if you felt that that motive in itself raised some doubt in your mind as to whether or not he was telling the truth, a reasonable doubt, is the word I should use—I don't want Mr. Turkus to jump up and say I did not use it—a

reasonable doubt in your mind, would you resolve that doubt in favor of the defendants?

A. I would.

Q. Now, I will ask you, because of your lack of jury service, the same question I asked the other men: You realize that men called to serve on a jury, twelve men, that they are called because we in America believe in moulding the opinion of twelve, if it is possible, into one?

A. Yes, sir.

Q. So we take men from all walks of life, put them together—because they have different experience, different angles, than a few?

A. Yes, sir.

Q. Each one of these men is entitled to his own particular view?

A. Yes, sir.

Q. We hope and the State hopes that these twelve views, when moulded together, will result in one single verdict. They hope a guilty one, and the defendant hopes a not-[fol. 1148] guilty one. But there are times, you realize, when honest men differ in opinions?

A. Yes, sir.

Q. If, irrespective of the fact that you have never served on a jury before, you go into the jury room and you form an opinion as to the believability of any of the evidence, the credibility of any of the witnesses, which is different from that of your fellow jurymen—you have the right to do that, you understand?

A. Yes, sir.

Q. However, you understand further that your duty, if you are accepted, is one to keep that opinion to yourself, or rather to discuss it with the other eleven men; it may be perhaps that after discussing with them you convince them you are right, and, on the other hand, it may be perhaps that they will convince you you are looking altogether at the wrong premise; if such is the case it is your duty to acquiesce in their thought?

A. Yes, sir.

Q. But in the event they have not been able to convince you, what I want to know from you is will you, because some man who may be on that jury says, "I have had previous jury experience," you are a busy man, you are serving here at a sacrifice to your business and yourself,

you will desire to get out—I don't say it will happen, but these things have happened—would any of those outside causes create in your mind a situation where you would say to yourself, "Well, the numbers are against me, I am going to acquiesce in what they say"?

[fol. 1149] A. It would not.

Q. Is there any reason that I may not have reached by questions, or any of counsel, which you, outside of the fact of wanting to get home—which is not a good reason, a good legal reason—could give any reason at all for not being a fair juror?

A. None that I know of.

By Mr. Turkus:

Q. Some questions have been opened up. Mr. Barshay and Mr. Cuff got to a certain point with you and then they did not continue. I would like to take it up from there. I think you said that from what you read and heard you had an opinion that was detrimental to the defendants.

A. I did.

Q. Then he started to question you this way: Would it require less evidence on the part of the District Attorney, in view of that opinion—and you said something that caused him to say to you, "You are in doubt about it?"

Mr. Cuff: I object to that as an improper recitation of what occurred.

The Court: Sustained. He made it clear. He said he would put all that aside.

Mr. Turkus: There is an answer I must go into. If you want to preclude me I will have no recourse, but I do want to go into this point. It is important.

Q. May I refresh your recollection? When I stated to you he asked you the question whether or not you would [fol. 1150] require less proof—

A. You are refreshing my memory.

Q. —then you said something to him, the exact nature of which I did not hear, but my recollection is he said to you then, "You have some doubt in your mind?"

A. I remember my answer was that I probably had at the time, but once I entered the jury box I would dispense with the opinion.

Q. I do recall you said something about corroboration.

Mr. Climenko: I object to the question in that form.

The Court: Sustained.

Q. In view of the impression you have now personally, is there some corroboration you want from the defendant?

A. No, sir, none whatever.

Q. Did you, when examined in the past, say something about corroboration?

A. I never used that word, to my knowledge.

The Court: The use of that word was obviously a slip of the tongue. The witness for the moment was apparently confused, and it was meaningless. It is surprising, with so much questioning, there has not been more confusion, but the talesman apparently is a man of unusual intelligence.

By Mr. Turkus:

Q. One thing was brought out by the Judge, that you spent time up in the Catskill Mountains.

Mr. Climenko: I object. The witness has already stated there is nothing about the geographical location which would in any way affect anything about this inquiry or as [fol. 1151] to his eligibility to serve.

The Court: There is no question as yet.

Q. Did you spend time up in the Catskill Mountains?

Mr. Climenko: I object.

The Court: He said he spent a vacation in the Mamakating Country Club, which is a very nice environment.

Q. I want to check up on certain matters in Sullivan County which may be very important.

Mr. Rosenthal: I object to the statement as to what he wants to check up or get rid of.

The Court: There is no question.

Q. Up in the mountains did you hear the name of Curley Holtz—

Mr. Climenko: I object to the recitations of these names upon the ground they are gratuitous and tend to develop inflammatory ideas; and utterly irrelevant as to anything in the background of the talesman.

The Court: Objection overruled.

Mr. Climenko: Exception to all questions along this line.

Q. Did you hear mention of the name of Goldstein?

A. No, sir.

Q. While up there in the mountains did you hear the name mentioned of Walter Sage?

A. I did not.

Q. While up there in the mountains did you hear any discussion in reference to an investigation of Judge O'Dwyer, [fol. 1152] up in Sullivan County, in conjunction with District Attorney Deckerman?

Mr. Climenko: That is objected to as irrelevant to the inquiry.

The Court: Objection overruled.

Mr. Climenko: Exception.

A. No, sir.

Q. Those people whom you know in the ladies' clothing manufacturing, did you at any time hear discussions about the investigation of District Attorney Thomas E. Dewey in Manhattan or that of Judge O'Dwyer in Brooklyn?

Mr. Climenko: Objected to as already answered.

The Court: I don't recall it. I will allow it.

A. No, I did not.

Mr. Rosenthal:

Q. Well, in passing, did you hear anything about Franklin D. Roosevelt?

A. Yes, sir.

By Mr. Turkus:

Q. You did not read about him in this case, did you?

The Court: Please.

Mr. Turkus: I will excuse him peremptorily.

The Court: These peremptory challenges are now seven--seven.

The law as to peremptory challenges may be wise or may be unwise. The Court will not express an opinion on that point. The fact remains, however, that were it not for [fol. 1153] peremptory challenges the jury box would have been filled at the conclusion of the ninth day of court work, and that two alternates would have been seated at the conclusion of the tenth day, and the case would now be on trial and the evidence in the course of taking.

So far as the Court's opportunity for observation is concerned, all those excused by peremptory challenges were duly qualified, intelligent, and unbiased talesmen.

I am making this observation solely because of a situation which has arisen in the public mind as to the length of time it has taken to select the jury, and in order to clarify that situation, and without any prejudice in the case on trial.

Mr. Talley: I respectfully take exception to your Honor's observation with respect to the selection of jurors up to now, and particularly your Honor's reference to the Court's opinion as to the qualifications of the men who have been challenged peremptorily by the defense. The defense is exercising its privilege and prerogative in using peremptory challenges when in its opinion such challenge should be exercised. Any opinion by the Court with respect to the qualifications of talesmen is no more than an expression of an opinion and might prevent the selection of the balance of the jurors in this case.

The Court: I think not. It is not so intended.

[fol. 1154] JAMES F. NAGLE, No. 2810, residing at No. 80 Willow Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. That is on the Heights?

A. Yes, sir, Columbia Heights.

Q. You are registered as a salesman. Are you employed by some firm or corporation?

A. Yes, sir, Timm & Behrens.

Q. Their office is on Columbia Heights?

A. No, sir, 190 Montague Street.

Q. I take it you sat here while these questions were being asked of other prospective jurors.

A. Yes, sir.

Q. You understand the nature of the charge? It is murder in the first degree.

A. Yes, sir.

Q. Is there anything about the nature of the charge of the crime of murder in the first degree which would preclude you from being a fair and just juror?

A. No, sir.

Q. May I proceed with the understanding you have no scruples, conscientious or otherwise, against capital punishment?

A. Yes, sir.

Q. And that you are in sympathy with law enforcement?

A. Yes, sir.

Q. Have you heretofore served as a juror?

A. Never.

Q. If accepted in this case will you take the law exclusively and solely from Judge Taylor?

A. Yes, sir.

Q. No matter what the prosecuting or the other attorneys may say in the case, the law comes from Judge Taylor, and [fol. 1155] will you take it exclusively from Judge Taylor?

A. Yes, sir.

Q. Since you received your jury notice did anybody speak to you about this case?

A. Not as to its merits; there may have been some discussion as to prospective service, that is all.

Q. Does your business bring you in contact with people in the Brownsville or the East New York area of Brooklyn?

A. Yes, sir.

Q. Has that been in recent years?

A. Yes, sir.

Q. Are you there presently?

A. We cover the metropolitan circuit, specialists in real estate.

Q. So your contacts in that area would be in connection with industrial buildings there?

A. Yes, sir.

Q. Did you have any contact of any kind, nature, or description in the garment center?

A. We cover the garment section too.

Q. How about the clothing district?

A. Yes, sir.

Q. And the Brooklyn waterfront?

A. Yes, sir.

Q. Are these all business contacts?

A. All business.

Q. Since you received your jury notice did anybody in any of these districts or industries speak to you about your service in this case?

A. No, sir.

Q. Did you have any contact with any official of the Amalgamated clothing workers of America?

A. No, sir.

Q. Do you know the name of Weinstein or Samuel Katz, do they have any significance to you?

A. No, sir.

Q. Or Bruno Belia, an organizer?

A. No, sir.

Q. Did you have any contact with any official of the [Vol. 1156] Clothing Truckers Union?

A. No, sir.

Q. Local No. 240 of the Clothing Truckers and Helpers Union?

A. No, sir.

Q. Is there any significance in the name of Salvatore Marazzano?

A. No, sir.

Q. Or Tosca?

A. None.

Q. Do you know anyone engaged in the business of clothing trucking?

A. Not directly, no, sir.

Q. When you say, "not directly," do you mean you have had contact with someone through real estate business?

A. Yes, sir.

Q. Do you know the names of Terry Burns or Abie Slabo, have they any significance to you, or Hymie Holtz?

A. No, sir.

Q. There are nine lawyers representing the defense, former Assistant District Attorney Barshay, former Assistant United States Attorney Wegman, and Mr. Climenko represent the defendant Buchalter.

A. No, sir.

Q. Or anybody connected with their office?

A. No, sir.

Q. With respect to Weiss, he is represented by former General Sessions Judge Talley, former Assistant District Attorney Cuff, and former Assistant United States Attorney Kriendler. Do you know any of those men?

A. No, sir.

Q. With respect to Capone, he is represented by Mr. Sidney Rosenthal, Mr. Fischbein, and Mr. Rosenberg. Do you know any of those?

A. No, sir.

Q. Or anyone connected with their office?

A. No, sir.

[fol. 1157] Q. Do you know any member of the bar who specializes in the trial of criminal cases?

A. No, sir.

Q. In the event you hear some argument urged three times by three different lawyers, will it have three times the effect on you because of repetition?

A. No, sir.

Q. With respect to the doctrine of the presumption of innocence, reasonable doubt, and the burden of proof being upon the District Attorney, and the rules applicable to the benefit of defendants in criminal cases, will you take the law exclusively from the Judge?

A. Yes.

Q. Will you, in consonance with his charge, give these defendants everything the law of the land says they should have and every Constitutional right and safeguard they should have?

A. Yes, sir.

Q. And with respect to the prosecution, is there any fault you have to find or any bias you have against the prosecution which uses testimony of one of the participants in the commission of a crime against the defendants on trial?

A. No, sir.

Q. May I go ahead with the understanding you have no fault to find with the prosecutor or the prosecution which breaks a case from the inside and employs the use of accomplice testimony?

A. No, sir.

Q. Will you, as you are instructed by the Judge, follow the law very carefully with regard to the believability or credibility of accomplice testimony?

A. Yes, sir.

[fol. 1158] Q. Will you look at everything wrong with the accomplice, everything to his detriment, everything which would affect his believability, will you look at his past association with criminals and every immoral and vicious act he has done in his life, every black mark there may be against him in the course of this case, and will you use all of those things in weighing his testimony with care and caution?

A. Yes, sir.

Q. Will you remember when you are trying this issue that we want to find out one thing: Are these three at the bar of justice, Buchalter, Weiss, and Capone, guilty of murder in the first degree, the killing of Joseph Rosen—that that is the issue in the case?

A. Yes, sir.

Q. And in considering the case, will you remember that when you have accomplice testimony in a case you are dealing here with a charge of murder in the first degree, a murder that happened in September, 1936?

A. Yes, sir.

Q. Will you look at all the surrounding circumstances we bring in in connection with the case?

A. Yes, sir.

Q. If you are charged, as you undoubtedly will be, by the Court that even if you believe an accomplice's testimony, if you believe that every word he says, that the defendants participated in the murder, and the art he ascribes to each, which they did, that one of them ordered it and the other carried it out and the third was the trigger man, and you believe everything he says, if there was no other supporting evidence the law is you would have to [fol. 1159] acquit; would you follow the Judge's instructions?

The Court: Without corroboration?

Q. If there was no corroboration?

A. If I was convinced they were guilty I would do it very reluctantly.

Q. The law says you cannot be convinced of guilt upon the unsupported testimony of an accomplice, even if you believe everything he says.

A. Yes, sir.

Q. And if you are satisfied even that he tells the truth when he ascribes each part that each defendant played, if there was nothing to support it, the Judge would charge you as a matter of law that you would have to acquit.

Mr. Barshay: If it were true, what he says, the Court would direct a verdict of not guilty.

The Court: It is the usual thing in examining talesmen to simply ask if the Judge charges so and so will you follow that instruction.

Mr. Turkus: I will withdraw my question in that form.

Q. If the Judge should charge you that in addition to the testimony of accomplice there must be, before there can be a conviction, other evidence tending to connect the defendants with the commission of the crime, will you follow that instruction of law?

A. Yes, sir.

Q. Will you endeavor, conscientiously, to apply it to the facts in this case?

A. Yes, sir.

[fol. 1160] Q. With respect to the allocation of evidence, will you follow exactly what the Judge says in that connection? For example, if the Judge charges you that certain items of testimony may be accepted as, one against one or two defendants, will you follow those instructions?

A. Yes, sir.

Q. If he tells you it may be used against all three defendants, will you follow that?

A. Yes, sir.

Q. In other words, will you conscientiously endeavor to apply the law as the Judge gives it to you, to this issue, in the case of the guilt or innocence of these men at the bar of justice?

A. Yes, sir.

Q. If accepted will you use your every-day common sense in weighing the issue of the case?

A. Yes, sir.

Q. And will you discuss the case over with common sense and understanding with the other members of the jury?

A. Yes, sir.

Q. And after you have given the defendants everything that the law of the land says they should have, and you are satisfied from the evidence in the case beyond a reasonable doubt that there are three guilty men, guilty of murder in the first degree, would you hesitate to say so?

A. I would not.

Q. Would you have the slightest fear or reluctance in rendering such a verdict?

A. No, sir.

By Mr. Barshay:

Q. May I know your occupation prior to the time you were actively engaged in the real estate business?

[fol. 1161] A. Yes, sir, I was in the appraisal business for insurance purposes.

Q. Were you working for yourself?

A. No, sir.

Q. Did that appraisal include the appraisal of stolen merchandise thereafter recovered?

A. No, sir.

Q. It had nothing to do with crime, or the subject of crime?

A. No, sir.

Q. Have you dealt with the City of New York in your real estate business?

A. Never.

Q. In the sale of property to them or the buying of property from them at any time?

A. No, sir.

Q. You said you had contacts in Brownsville and East New York. Did you know any of the names involved that were given here?

A. No, sir.

Q. Did you have any contacts on Pitkin Avenue?

A. Well, probably in my traveling through the city possibly I did; I don't particularly remember any.

Q. You did not discuss the matters there?

A. No, sir.

Q. Which are involved here?

A. No, sir.

Q. Were you ever on the jury before?

A. No, sir, never.

Q. Were you ever called before?

A. On one occasion, quite some years ago, but I was not called on the case.

Q. Were you ever a Grand Juror?

A. Never.

Q. Were you ever a Federal juror?

A. No, sir, I have not.

Q. So, Mr. Nagle, this is your first experience in criminal law other than what you said?

A. Yes, sir.

[fol. 1162] Q. Have you read about this case?

A. I scanned the headlines only. I did not read.

Q. Since coming here have you formed an opinion about this case?

A. I have formed no opinion, no, sir.

Q. Listening to the questioning of prospective talesmen, did you form an impression about the case?

A. No, sir, not from that source.

Q. From any source whatever?

A. Possibly from scanning the headlines I have had an impression.

Q. And that was a definite impression?

A. No, not definite.

Q. At any rate, it is detrimental to the defendant?

A. Yes.

[fol. 1163] Q. And it would require some evidence to remove that detrimental impression you formed?

A. I would not think that. I think during the general course of the trial I would be perfectly free to discard that.

Q. But at present it is not discarded?

A. That is true, yes, sir; they are not definite impressions, though; they are simply impressions I know I could discard.

Q. Whatever you may call them, thought, impressions, ideas, or opinions, no matter what terminology is used, they are detrimental to the defendants?

A. Yes, sir.

Q. So, even after all these days of listening to instructions of the Court, you are honestly of the opinion that maybe there will come a time—there will come a time when you may have to discard them; isn't that so?

Mr. Turkus: Objected to as ambiguous.

The Court: Sustained.

Q. At the present time the impressions which you say are opinions or thoughts or ideas which are detrimental to the defendant are still with you?

A. Yes, sir.

Mr. Turkus: I object to the form of the question.

The Court: It is repetitious.

(Whereupon at one p. m. a recess was taken. The defendants were remanded. The talesman were admonished as to their demeanor.)

(Recess until 2:00 P. M.)

[fol. 1164] Afternoon Session—Trial Resumed

JAMES F. NAGLE resumed the stand and was further questioned as to his qualifications.

By Mr. Rosenthal:

Q. Mr. Nagle, just before recess you told Mr. Barshay that you had some form of impression or opinion of some character which was detrimental to the defendant; is that correct?

Mr. Turkus: That is objected to. That embraces an improper statement.

Mr. Rosenthal: I am asking is that correct. He did not say opinion, he did use a third word, which escaped me.

The Court: The phraseology is inaccurate.

Mr. Rosenthal: The answer is asked of the witness by the language of the question, which says, "Is that correct?"

The Court: Objection sustained.

Mr. Rosenthal: I respectfully except.

Q. Did you prior to recess tell Mr. Barshay that you had an impression of some character or an idea which was detrimental to the defendant, as you sat in this jury box here now?

A. Yes.

Q. Did you also state to Mr. Turkus that you had some contacts with the clothing and dress and garment center of New York?

A. Very indirect.

Q. And also with the waterfront in Brooklyn?

A. Yes.

[fol. 1165] Q. Are those contacts of such a nature that you heard at any time discussed anything concerning crime or criminal activities in those particular localities?

A. In the East New York section, not the waterfront section.

Q. And how recently would you say that you had any discussions of that character?

A. I never had any discussions.

Q. Where did you glean your knowledge, from discussions of others with you?

A. Talking to employers out in that section. They have dropped inferences and things like that at various times. There has never been any discussion.

Q. In other words, it was unsolicited information that was given to you by people in that locality while you were out there on your own particular business?

A. That is right.

Q. And that, coupled with what you have read or in scanning the headlines, is your expression, I think.

A. Yes.

Q. Has been the cause of the impression which you have gained; is that correct, sir?

A. Yes.

Q. Did I also understand you correctly, in respect to a question that was asked by Mr. Turkus of you, that even if you believed an accomplice's testimony to be a hundred per cent true, that in accordance with our law it would be incumbent upon you to acquit the defendant, that your reply to that question was that you would under those circumstances do so, with great reluctance?

A. No, that I would accept the ruling of the Court with reluctance.

[fol. 1166] Q. In other words, you are not thoroughly in your own mind in accord. You are not wholly in accord with the thought that if you were to determine that an accomplice were telling you the truth, that even under those circumstances, if there were no independent evidence, that it would be your duty under our law to acquit; is that correct?

Mr. Turkus: I object to the form of the question on two grounds: first, it has already been answered the juror would follow the instruction of law and, secondly, that he has already made a response to that question.

The Court: If it is a question of accomplice as a matter of law without any corroboration, of course there would be a direction of acquittal and the juror would have no discretion. He has responded he would follow the instruction of the Court. Objection sustained.

Mr. Rosenthal: I respectfully except. My question, with all due deference to the Court, is not addressed to that particular thing. The Court may direct people under our law to do certain things, but there may be a fixed opinion [fol. 1167] in the mind of the particular juror, and that is what I am trying to ascertain, and his answer to Mr. Turkus implies that he would have a reluctance in following any such law, even though charged by the Court. That is the answer as I took it.

The Court: The Court has ruled.

Mr. Rosenthal: I respectfully except.

Am I correct in my statement, sir, of what your answer implied to Mr. Turkus when you were questioned by him originally, that if the testimony in this case relied solely upon an accomplice whom you believed, that you would with reluctance accept the direction from the Court that it would be your duty under those circumstances to acquit?

Mr. Turkus. I object to it. It has already been answered.
The Court: Sustained as answered.

Mr. Rosenthal: I respectfully except, if your Honor pleases.

The Court: You have asked the same question two or three times and had your answer and you argue after the Court rules. The Court will maintain its patience at all times, but please don't delay the trial in this manner.

Mr. Rosenthal: I respectfully except.

The Court: The Court is trying to be perfectly fair, [fol. 1168] trying to indulge you to the utmost, but please cooperate.

Mr. Rosenthal: I must respectfully except to the Court's statement.

The Court: All this takes time.

Q. Mr. Nagle, in view of the impression which you have in your mind—let me withdraw that first. You have never had any jury service?

A. No.

Q. Assuming, sir, that you were called to serve in a case where you had not any impression, had not gained any impression concerning the individual, and never heard discussed by people in East New York anything concerning particular crime, had not scanned headlines, and had a free and open mind without the knowledge of who the person was on trial, do you say, sir, that the quality of evidence in a character of case such as I have just described to you would or would not be different than the quality of testimony that would be necessary to convince you in the case such as you now have where you have read headlines and have spoken to employers in East New York?

Mr. Turkus: I respectfully object to the question. First, it is a legal question, and, second, it embraces the statements of fact not elicited on the answers from the prospective talesmen.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. In view of your statement, sir, at the present time, is [fol. 1169] it not true that the quality or quantity of evidence that would be necessary in this case would be different than in a case where you had neither read headlines nor formed an impression concerning the particular persons on trial?

Mr. Turkus: I object to it as a legal question. The quantum of proof is a legal question.

The Court: Sustained.

Mr. Rosenthal: Respectfully except.

Q. Is it not true, sir, that as you sit here now you have an impression which is adverse to the defendant?

A. Yes.

Q. Is it not true, sir, that you have sat here a number of days and heard discussed different questions of law applicable to this case?

A. Yes.

Q. Is it not true that you have heard the Court state and Mr. Turkus and others that the defendants are presumed to be innocent until the contrary is proven?

A. Yes.

Q. Is it not true that you heard numerous discussions with other jurymen about having read papers and about impressions which they have formed? You heard discussed here?

A. No, that is not true.

Q. Have you in the time that you were present here heard other jurymen state that they have read newspapers and formed impressions?

A. Oh, yes.

Q. The impression which you now have in mind you carried with you irrespective of the questioning of other [fol. 1170] jurymen up to the present moment, sir, is that right?

A. Yes.

Q. In the event that you were accepted as a jurymen, is it not true that because of the impression which you are carrying with you up to the present moment that the quality or quantity of the evidence that would be necessary for The People to give to you would be different than if you did not have that impression at this time?

Mr. Turkus: I object to the question. It is a legal question on quantum of proof and burden of proof which the juror must take from the Court.

Mr. Rosenthal: I submit to the Court that it is a state of mind of the juror as to whether or not the impression is of such a character as to imply bias as against these defendants.

Mr. Turkus: The sole test is, if he has an impression, can he lay it aside.

The Court: He has not said that he has formed any opinion as to the guilt or innocence of the defendants on this charge. Objection to the present question is sustained.

Mr. Rosenthal: I respectfully except.

By Mr. Rosenthal:

Q. The impression which you have and which you say that you have in your mind goes towards the guilt or innocence of these particular defendants, does it not, sir?

A. No, I would not say that.

[fol. 1171] Q. Well, you say that it is in the nature of an opinion or expression or idea or impression that is detrimental to the particular defendants; is that true, sir?

Mr. Turkus: I object to that, embracing a state of fact not stated by the respective talesman.

The Court: Sustained as already answered.

Mr. Rosenthal: I respectfully except.

Q. The impression that you have goes towards the question of whether or not these defendants are guilty of the particular crime, does it not?

A. No.

Mr. Turkus: Objected to.

Q. Is it of such a nature as would weigh in your mind were you accepted as a juror?

A. Will you repeat that, please?

Q. Is it of such a nature that it would weigh in your mind if you were accepted as a juror?

Mr. Turkus: I object to the form of the question. That is an ambiguous question. The test, as I understand it—
[fol. 1172] The Court: Don't argue these objections.

Mr. Turkus: I object to it.

The Court: Can't you reframe that question? "Weigh in your mind" is ambiguous.

Mr. Rosenthal: Does your Honor wish me to reframe it?

The Court: I wish you would.

Q. Is it such an impression as will weigh in your mind against these defendants were you accepted as a juror?

The Court: That is the same question. Objection sustained.

Mr. Rosenthal: I respectfully except, sir.

By the Court:

Q. Is it such that it would remain in your mind and activate you in your duties as a juror in determining the guilt or innocence of the defendants on this charge?

A. No, it is not.

By Mr. Rosenthal:

Q. In answering Mr. Barshay before—and correct me if I am wrong—didn't you express some doubt on that subject, sir, as to your ability to remove it?

Mr. Turkus: I object.

A. I don't think so.

Q. Is there any doubt in your mind as to your ability to remove the impression which you have and which you say is detrimental to the defendants, or some of them? Is [fol. 1173] there any doubt, sir, in your mind?

A. None.

Q. Whom would you expect to remove this impression were you called as a juror?

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Rosenthal: Respectfully except.

Q. Is there any thought in your mind now, if you entered the jury box, as to how this impression which you say is now with you should be removed?

Mr. Turkus: I object to it.

The Court: Sustained. He said he would do it himself.

Mr. Rosenthal: I again respectfully except to the Court's ruling.

Q. You feel at this time that irrespective of the impression which you say that you formed and have with you now, that you could lay that impression totally and wholly aside without giving it any thought or consideration in determining the guilt or innocence of these defendants?

A. Yes.

Q. Would it require any evidence to remove the impression you now have?

Mr. Turkus: Objected to.

The Court: Sustained as already answered.

Mr. Rosenthal: Respectfully except.

By Mr. Talley:

[fol. 1174] Q. Mr. Nagle, something would be required in the course of this trial to change the impression?

Mr. Turkus: I object to it. It has already been answered.

Mr. Talley: I have a right to question this talesman whether it has been answered or not.

The Court: Mr. Talley has a right to repeat. He has not previously asked the question.

A. Will you repeat it?

Q. (Pending question read.)

A. Only the ordinary course of the trial

Q. What in the ordinary course of the trial do you think would happen, would you require, in order that that impression might be removed?

A. Only the general testimony given; that is all.

Q. Then it would require some testimony, whether it was general or specific, to remove the impression?

A. Possibly.

Q. What?

A. Possibly.

Q. Not "possibly." Actually, is not that the situation?

A. No, I think I could cast it aside if I was accepted in the box.

Q. In other words, you would not go into the box with any impression. Is that what you are trying to convey?

A. I could do so.

Q. The impression would be removed in your mind before [fol. 1175] you would be accepted as a juror?

A. I think so. I am sure of it.

Q. But as you sit on that stand listening to my questions, you still have the impression, have you not?

Mr. Turkus: I object to it. It has been answered.

Mr. Talley: I have a right in behalf of my defendant to question this juror, whether it has been answered in response to any other questions or not.

Mr. Turkus: In response to Judge Talley's questions, the prospective talesman said that he could cast it aside.

The Court: That was the first question. Sustained as repetition.

Mr. Talley: Exception.

Q. How long have you entertained this impression that you have?

A. Well, I should say only since I have been called as a juror.

Q. And do you date that back to August or the actual commencement of this trial in the court-room?

A. Possibly since the start of the trial here.

Q. That impression was formed by talks you had with people about this case or these defendants?

A. And by one article that I read.

Q. In what paper?

A. I think it was the evening *Sun*.

Q. Mr. Nagle, let us be perfectly fair with each other. I am trying to be fair with you. There have been so many questions asked upon this subject I am a bit confused as to [fol. 1176] just what your state of mind is. I will put the question plainly to you: Have you or have you not an impression as to the guilt or innocence of these defendants at this moment?

A. I have a slight impression.

Q. And that impression is detrimental to the defendants or some of them?

A. Yes.

Q. And it would require something in the ordinary course of the trial, to use your expression, to remove that?

Mr. Turkus: I object to it as repetitious.

Mr. Talley: Perfectly proper question, sir.

The Court: He said he would cast it aside.

By the Court:

Q. Do you mean the guilt or innocence of this charge of murder?

A. Yes. It does not concern this charge. My impression does not concern this particular charge.

Q. So you were confused?

A. Yes.

Q. Do you wish to correct your answer? Is it just an ordinary impression, generally detrimental—

A. To the character of one of the defendants.

Q. But not as to the alleged act of which they are accused in this indictment?

A. No, I know nothing about that.

By Mr. Talley:

Q. Now do you say that your impression is about the character of one of the defendants?

A. Yes.

Q. And that impression is detrimental to him?

A. Yes.

[fol. 1177] Q. And you would be inclined to believe the testimony that was given about that particular defendant upon whom you have the impression because of your impression that is detrimental to him, isn't that so?

A. Not necessarily.

Q. What do you think would remove that impression? It would have to be testimony, wouldn't it? We have nothing else in this trial.

Mr. Turkus: I object to it. It is argumentative and repetitious.

The Court: And leading. Sustained.

Mr. Talley: Exception.

Q. What is the reluctance of which you speak in accepting the charge of the Court as to the necessity of corroborating from an independent source the testimony of confessed accomplice?

A. I understand the question at that time to be if I was convinced that defendant was guilty. I said in that case I would with reluctance accept a ruling of the Court that that testimony be disregarded.

Q. In other words, you are not quite in accord with that law as it would be announced by the Court?

A. I have never understood the law.

Q. That the testimony of a confessed accomplice must be corroborated by some independent evidence. That is the law in this country.

A. I am not familiar with the laws.

Q. We have stated to you, I think repeatedly.

[fol. 1178] A. I said that I would obey the law but it would be with reluctance if I was convinced that the defendants were guilty.

Q. Even though the testimony which convinced you came from the mouths of confessed accomplices to the crime?

A. If I was convinced that they were guilty, I would with reluctance accept such a charge.

Q. Therefore you rather take exception to the provision of law, based upon the experience of centuries, that the testimony of accomplices must be corroborated by some independent testimony—

Mr. Turkus: I object to it.

[fol. 1179] Q. —distinct from those accomplices; isn't that correct?

The Court: Sustained.

Mr. Talley: Exception.

The Court: It is not a requirement that a talesman shall agree with the law.

Mr. Talley: It is agreed that he must accept it.

The Court: He must follow it. None of us agree with all the laws.

Q. The Court will charge you that no testimony is required to be supplied by the defendants in a criminal action and that it is the right and privilege, a very sacred right, of a defendant not to take the stand. If the Court charges you to that effect and one or any of these defendants does not take the stand after the People's case is in, would you indulge in any inference unfavorable to such defendant because he did not take the stand?

Mr. Turkus: That is a legal question.

The Court: Sustained.

Mr. Talley: Exception. It goes precisely to the talesman's state of mind.

The Court: Pardon me, Judge. Maybe I was too abrupt, because, if I recall the words of the statute, they are: "The defendant has a right to take the stand as a witness in his own behalf, but for his failure or refusal to do so no inference [fol. 1180] ence of guilt may be drawn against him."

Mr. Talley: Yes, sir.

By the Court:

Q. Should the Court so charge you, will you follow the instructions of the Court and draw no inference of guilt against the defendant for his failure to take the stand?

A. I would, sir, very reluctantly.

Q. But will you do it?

A. Yes.

By Mr. Talley:

Q. But you would be reluctant to accept that instruction from the Court likewise?

A. I am afraid so.

Q. You do not agree with it?

A. I am afraid not.

Q. In your judgment a defendant accused of crime should take the stand and deny what has been testified against him; is that correct?

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Talley: Exception.

Q. Mr. Nagle, don't you think that your reluctance to accept the law as it will be charged by the Court unfits you to be a fair and impartial juror in the trial of this case?

Mr. Turkus: I object to that.

The Court: Sustained.

Mr. Talley: Exception.

[fol. 1181] Q. Do you know of any reason why you could not sit as a fair and impartial juror on the trial of this case?

A. No.

Q. You do not?

By Mr. Barshay:

Q. Isn't it a fact, Mr. Nagle, that your accepting the Court's law with reluctance—

Mr. Turkus: I object to it.

The Court: The question is not asked.

Mr. Turkus: I thought it was finished. Excuse me.

Q. Isn't it a fact that your reluctance, even though you say you will do it, to accept the Court's charge on the law is based upon the impression that you have of one of the defendants' character?

A. Oh, no.

Q. Not at all?

A. Not at all.

Q. You mean your reluctance is divided from the impression?

A. No, my reluctance would be more or less that a person accused of a crime should be willing to get up and——

The Court: We want no thesis. People are divided on that point.

Mr. Barshay: May I proceed?

The Court: Not with that question.

Mr. Barshay: Your Honor, the juror has volunteered an answer which I shall base as a question, most respectfully, and then your Honor can rule and see if I am wrong. I do not do it intentionally.

The Court: The Court has properly interrupted it, I [fol. 1182] think.

Mr. Talley: May we not have the answer of the talesman upon the record, despite your Honor's ruling?

The Court: No, I have stopped it.

Mr. Barshay: Exception.

Mr. Talley: I except to your Honor's right to strike out any answer given by a talesman in answer to a question as to his qualifications. It is not testimony. He answered the question. It is on the record, and I question, with great respect, your Honor's right to strike it out. It is not testimony.

The Court: I think it is unwise. There are other gentlemen here, and I do not think it is wise to have a discussion on legal philosophy in their presence. Let the incident be considered closed.

Mr. Barshay: We respectfully except.

Mr. Talley: I except to your Honor's striking out the answer given by the talesman in answer to that question.

Q. Now, Mr. Nagle, despite every admonition of the Court which you heard, you just volunteered the fact that

you think you would require that any man charged with a crime should make some explanation of it.

Mr. Turkus: Objected to. That is a legal question.

The Court: Sustained.

[fol. 1183] Mr. Barshay: Respectfully except.

Q. Now, you said that you formed an impression detrimental to the character of one of the defendants?

Mr. Turkus: I object to that.

Q. Did you say that?

A. Yes.

Mr. Turkus: That is repetitions.

Mr. Barshay: It did not come from me.

Mr. Turkus: You started to inquire this morning.

Mr. Barshay: I yielded to an older and wiser man, Mr. Turkus, and now I want to take my place.

Mr. Turkus: I yielded to the Judge, who is the wisest in the court. As for age, we will——

The Court: The Court has acquired the utmost respect for the learning and sagacity of counsel here. I think it is a brilliant array of counsel. The question may be answered, because Mr. Barshay has not asked it before.

Q. (Pending question read.)

A. Yes.

Q. Even though it has nothing to do with this case?

A. Yes.

Q. Even though you heard many times repeated here that character is not an issue in this case——

Mr. Turkus: I object to it.

Q. Unless—Let me finish the question, because otherwise it would be illegal. —unless the defendant himself puts character in issue?

Mr. Turkus: That is a legal question, please the Court.
[fol. 1184] The Court: Sustained as argumentative.

Mr. Barshay: Respectfully except.

Q. And so that this impression as to this particular defendant's character, whoever he may be, will have to be dissipated during the course of the trial; am I correct?

Mr. Turkus: That is objected to because that has already been answered.

The Court: It has not been answered to a question put by Mr. Barshay on behalf of his particular client.

Q. (Pending question read.)

A. Yes.

Q. And I take it, sir, you understand that you don't expect the District Attorney to furnish evidence in this case to dissipate any bad impression of any defendant, do you?

A: Yes, I would think so.

Q. You want the District Attorney or you would expect the District Attorney to give here evidence as a part of his case in his effort to try to convict these defendants, to give good testimony on their behalf to dissipate any bad impression?

A. I misunderstood your question. I think I misunderstood your question.

Q. I am sorry, sir. I thought you did. What is your answer now?

A. Will you repeat that first?

Q. (Two questions read.)

A. No.

Q. Then you would expect someone to do it on behalf of [fol. 1185] the defendant involved, wouldn't you

Mr. Turkus: That is a legal question.

Mr. Barshay: That is not a legal question.

Mr. Turkus: It is.

Mr. Barshay: What has law got to do with this man's expectations?

Mr. Turkus: Of course it has.

The Court: It is psychological and impossible for anybody to rule anything out of his recollection. Those things are done by a higher power than ours. The question is whether a man can lay aside his impression.

Mr. Barshay: I will get to that.

The Court: You cannot forget things, but you can disregard them.

[fol. 1186] Mr. Barshay: I cannot do it all in one breath.

The Court: Objection sustained.

Mr. Barshay: Respectfully except.

The Court: Because the premise is improper.

Q. I take it you will be able to lay aside that impression only after someone gives you testimony as a basis for laying aside your impression?

A. Yes.

Q. So that that someone will have to be either the defendant involved or someone in his behalf, isn't that so?

Mr. Turkus: That goes right to the legal question. The juror must be instructed by the Court.

The Court: Sustained as argumentative.

Mr. Barshay: Hasn't he already been instructed by the Court?

Mr. Cuff: We except.

Mr. Barshay: We all except, your Honor, to that.

Q. And so that, sir, unless the defense, through itself or through witnesses, furnishes testimony here to dissipate that impression which you now have, it will not be dissipated in your mind, will it?

Mr. Turkus: Objected to for two reasons: It has been answered; and second, it is argumentative.

The Court: Sustained.

Mr. Barshay: Respectfully except.

[fol. 1187] Q. You tell me in your own language, sir, whom do you expect to remove that impression that you now have?

A. Well, the impression does not concern this particular trial.

Q. I know that.

A. Or the merits of this trial. It is merely a character impression that I have. I do not know how I could answer the question otherwise.

[fol. 1188] Q. Whom do you want to remove it? Whom do you expect to remove it?

Mr. Turkus: I object to it. It has been answered by the talesman on previous questions that he would lay aside his impression; that it does not affect the merits of this case has been repeated by the talesman.

Mr. Barshay: It goes to a person's credibility. How can you say it does not affect the merits of the case? I press the question.

Mr. Turkus: I object to it on the ground it is argumentative; second, it has been answered; third, it is a legal question.

The Court: Maybe a question can be asked that is perfectly proper that may clarify it.

Mr. Barshay: I asked the question in the form, most respectfully: Whom do you, sir, expect to remove that impression?

The Court: Pardon me, Mr. Barshay. So much has been said by counsel for the defense about one of the defendants being presently serving a lengthy term in prison under another conviction that maybe that is what the juryman has in mind, and, if so, if that is all it is, there would be no use in pursuing questioning on that point any further because that situation has been revealed by defense counsel [fol. 1189] set to all of the talesmen in this case.

Mr. Barshay: I most respectfully disagree with the Court, because this gentleman here has said that the impression he has gained is not what your Honor has just said but from reading the newspapers and discussions with some people, and I would be grateful to the Court if I was at liberty to clarify that situation.

The Talesman: I beg pardon. I said it was the result of one article that I read.

Q. One article?

A. That is right.

Q. That had nothing to do with the question about one defendant's incarceration, isn't that so?

A. I did not say that. That is what it is. It is what the Judge has spoken about.

Q. It is both?

A. No, it is what the Judge has suggested, the article—Do you want me to tell the article I read?

Q. You may tell too much.

The Court: All you can say is yes or no, whether that is all there is to it.

Mr. Barshay: May we clarify the record?

Q. Which is it that gave you the impression, the fact that one defendant is serving time now on another matter, or the fact that you read something in the press?

Mr. Turkus: Objected to. He has answered that was [fol. 1190] the matter that he read.

Mr. Barshay: Then you disagree with the Court?

Mr. Turkus: I am not talking to you, Mr. Barshay. I am urging an objection to your Honor.

By the Court:

Q. Is it anything outside of that man's present conviction and sentence?

A. No, it is not.

The Court: There you have the answer.

By Mr. Barshay:

Q. In other words, his credibility is affected now by virtue of that item?

Mr. Turkus: Objected to. That is a legal question and that may affect credibility.

The Court: Sustained.

Mr. Barshay: May I put it this way?

Q. Based upon that fact, you have drawn an impression unfavorable to the defendant involved?

A. Yes.

Q. And you would require somebody to furnish testimony to remove that unfavorable impression?

Mr. Turkus: Objected to as repetitious.

The Court: Sustained as repetitious.

Mr. Barshay: We never got an answer. How could it be repetitious, your Honor?

The Court: It is my recollection of the record.

Mr. Barshay: I most respectfully except, and I urge [fol. 1191] your Honor to permit this juror to answer this question so we can get away from the subject and I can get a ruling one way or the other.

The Court: The Court has ruled.

Mr. Barshay: Respectfully except.

Q. Unless the defendant involved takes the stand and offers testimony, would that impression be removed?

Mr. Turkus: Objected to. It has already been answered.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. Are you now presently of the mind that without any testimony given on behalf of this defendant by himself or others, you would remain throughout this trial with that impression?

Mr. Turkus: Objected to, repetitions.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. And your impression now at this time has precluded you or will preclude you from rendering the impartial verdict on the evidence unless the defendant makes some explanation?

Mr. Turkus: Objected to. It has been answered to the direct contrary.

The Court: Sustained.

Mr. Barshay: To me, sir, it has not been answered at [fol. 1192] all.

The Court: It has been sufficiently answered.

Mr. Barshay: Your Honor, we challenge this juror for cause on the ground of implied bias.

The Court: Try the challenge.

(James F. Nagle was duly sworn.)

By Mr. Barshay:

Q. Now, sir, you are under oath.

A. I am.

Q. You understand that?

A. Yes.

Q. And you have clearly in mind every question asked of you?

A. Yes.

Q. Every answer made by you?

A. Yes.

Q. Every admonition that the Court has given, both to you and to other jurors?

A. Yes.

Q. Now under oath I ask you at this very minute, do you still retain an impression unfavorable to one of the defendants in this case?

A. Yes.

Q. And you are not able to lay aside that impression unless and until, on behalf of that particular defendant, proof or testimony is given either by himself to dissipate it—

Mr. Turkus: That is a legal question. The juror should be apprised of the law by the Court.

Mr. Barshay: He has already said he has been apprised of it and he has it in mind and he has an open mind on the Court's admonition.

[fol. 1193] The Court: The question is leading and telling him what he thinks instead of asking him what he thinks.

Mr. Barshay: I respectfully except.

Q. You tell me in your own language, sir, would it require anything at all on behalf of that defendant to dissipate the impression that you volunteered you had against him?

Mr. Turkus: I object to it. That is a law question.

The Court: He said the impression was because of the [fol. 1194] present conviction and incarceration. Why should he be required to get it out of his mind? It is a fact and it is admitted by all counsel for defendants and proclaimed openly in the presence of the entire panel. The question is, will he disregard it?

Mr. Barshay: I have asked him.

The Court: A man who is under previous conviction, a man who comes into court under custody of Federal officers and bailiffs, has to be tried the same as anyone else. You cannot bar a trial simply because jurors know of his present prison status. We must get jurors who will lay that aside and judge him on the evidence in this case alone, from the testimony that they hear on the stand.

Mr. Barshay: I most respectfully except.

The Court: Regardless of his present condition as to incarceration.

Mr. Barshay: I most respectfully except to the Court's observation with respect to that fact and I want to urge upon the Court that for ten minutes now I have been trying to get from this juror an answer to the very point that your Honor has instructed me I should get, Can he lay aside that impression? and I have not been able to get an answer because the Court has sustained the objection. I am still at [fol. 1195] a loss what this juror's mind is.

The Court: He has answered it repeatedly.

Mr. Barshay: I have not heard it. If I did, I forgot it, and if I did not I am confused by the interruptions.

The Court: He has answered repeatedly he would lay it aside.

Mr. Barshay: I object to your Honor's observation of that. I did not hear that from this man's mouth, and we don't know.

The Court: The Court cannot tolerate fighting back with the Court on rulings. That is not orderly in any court of justice. It is not the way to try a case.

Mr. Barshay: I know your Honor knows I am not fighting the Court.

The Court: Don't do it. It is human nature, but don't do it.

Mr. Barshay: I am fighting your Honor here for a right I think my client has.

The Court: I admire your fighting qualities because I used to fight that way myself.

Mr. Barshay: And, frankly, I learned it from you.

The Court: I used to wish, in these cases, there were more peremptory challenges than there are, but I am a judge now.

[fol. 1196] Mr. Barshay: I may make an observation with respect to your Honor's remark, that the peremptory challenges were fixed by the State Legislature and not by me; they are given to my client as a benefit of law, as to every other client.

The Court: I am not taking them away; I respect your right to use them.

Mr. Barshay: All right, sir. I don't intend to challenge this juror peremptorily yet, until my rights on cause are exhausted.

The Court: Kindly proceed expeditiously. We are wasting time. It is becoming a public scandal.

Mr. Barshay: I take it, sir, you don't charge that to the defense, because at present—

The Court: This is not specific. I won't say more because you will take more exceptions and make more speeches.

Mr. Barshay: Let it be clear here—the District Attorney has taken as many peremptory challenges as the defense, and has exercised them before we did.

Mr. Turkus: The Court requires me to.

Mr. Barshay: I don't find fault with you.

Mr. Turkus: It sounds like it now.

The Court: May I suggest, in the interests of expedition, why don't you compose yourself and let one of the other counsel go ahead with the trial of the challenge until you do.

Mr. Barshay: Of course, your Honor assumes that I am [fol. 1197] not composed, but I am not flustered in any degree, sir. I am perfectly within my right, and I ask you

in the interest of justice, let this gentleman answer can he lay aside the impression he has or can't he, and we can save time.

Mr. Turkus: I wish I could be heard, sir. There is a legal question involved about that that may come into play——

The Court: The court-room is in disorder. The Court requests the questioning resume, and will rule on objections.

By Mr. Barshay:

Q. In accordance with his Honor's instructions, sir, I just want to ask you one question. The impression that you now have which is detrimental to one of the defendants, can you lay it aside? Yes or no?

Mr. Turkus: I object.

[fol. 1198] A. I answered it before. I said I could lay it aside and I would lay it aside.

Q. I will ask you this other question, sir: Will you lay it aside in any event, or will you lay it aside only when and if there comes something from the defendant involved to cause you to lay it aside?

Mr. Turkus: I object to it. It is repetitious, and second, it is a law question. You see, if a defendant who has been convicted——

The Court: Don't argue.

Mr. Barshay: Can we get an answer to that, and I will sit down?

The Court: Sustained as repetitious.

Mr. Barshay: In the interest of justice, sir, I say it may be repetitious. I never heard it from him.

The Court: Don't argue.

Mr. Barshay: I most respectfully except.

Mr. Talley: May I have another question?

By Mr. Talley:

Q. Mr. Nagle, you believe that any person charged with crime and brought to trial upon that charge should stand up and answer the charge preferred against him, do you not?

Mr. Turkus: I object to it. That is a discussion of the philosophy of the law.

The Court: Sustained.

[fol. 1199] Mr. Talley: No philosophy of the law involved there at all. It has to do with this talesman's state of mind. As a matter of fact, he has already stated in the course of his examination he believes that anybody charged with crime should stand up and answer that charge. There was some confusion in the record in respect to that, and I want to avoid that confusion and have a direct answer to a very direct question. I submit I am entitled to it.

The Court: The Court has ruled.

Mr. Talley: I except.

Mr. Rosenthal: I have one question.

By Mr. Rosenthal:

Q. You stated, Mr. Nagle, that it would be with reluctance that you would accept the Court's charge telling you that even though you might believe the testimony of an accomplice, that it would be your duty, if there was no independent evidence tending to connect the defendant with the crime, to acquit, it would be with reluctance that you would accept such a charge; is that true, sir?

A. No, I think I said— I think the question was asked, if I was convinced that the defendant was guilty. I said then that I would accept such a charge with reluctance.

Q. In other words, if you were convinced of the truth of the story of the accomplice—

A. Well, it might be—

Q. —as to the guilt of the defendant, is that what you [fol. 1200] mean?

A. It might be only one of the things that would lead to my conclusion of guilt.

Mr. Turkus: That is a law question, because he cannot be convinced of guilt upon that.

Q. When you said, as you did, that it would be with reluctance that you would accept the Court's charge to find a defendant not guilty even though you believed the testimony of the accomplice, if you found no corroborating evidence, did you misunderstand the question when you answered that it would be with reluctance that you would accept such a charge?

Mr. Turkus: Objected to as already answered.

Mr. Rosenthal: I am trying this now on the challenge

which has been made, and it is a preamble to a question which is perfectly proper.

Mr. Turkus: On the further ground it is a legal ground, and second, it is complicated and ambiguous.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. You did say, sir, that you would with reluctance accept the charge of the Court that you should find the defendants not guilty in the event that you were convinced of their guilt on the testimony of an accomplice solely. Did you say that?

A. No, I didn't.

Q. What was your answer, that you would with reluctance accept the charge of the Court, in answer to what [fol. 1201] particular question of law that was addressed to you, if you recall?

A. I understood the question to be, if I was convinced of the guilt of the defendant, not on any particular person's testimony, if I was convinced of the guilt of the defendant, that I would accept such a ruling from the Court with reluctance.

Q. Do you understand, sir, that the only way you could be convinced now, sitting here for a number of days, of the defendant's guilt is from the testimony that comes from the mouths of the witnesses? Do you understand that is the only way you could be convinced?

Mr. Turkus: Objected to. It is argumentative and now becomes repetitious.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. Is it a fact, sir, that if you were convinced of the truth of an accomplice's testimony, because of your state of mind, that you would be more ready to accept the so-called independent evidence that has been described to you than otherwise would be the case?

Mr. Turkus: I object to it. It is argumentative, it is repetitious, and it is ambiguous.

Mr. Rosenthal: It has never been asked before and it is not argumentative.

The Court: Sustained.

Mr. Rosenthal: I respectfully except. I press the charge [fol. 1202] of implied bias along with the co-defendants.

Mr. Barshay: With your Honor's permission, I will ask just this question.

The Court: No repetition.

By Mr. Barshay:

Q. Assuming, sir, that the prosecution presents its case against our client and the defendant, in his wisdom or lack of it, chooses to rest and offer no testimony whatever, in that event, sir, would you lay aside the impression that you have?

Mr. Turkus: I object to it.

The Court: He has already said that he would lay aside his impression for the purpose of the trial.

Mr. Barshay: I never heard him say that yet.

The Court: That is the meaning of it. Sustained.

Mr. Barshay: I except respectfully. That is all. We press the challenge.

The Court: The challenge is overruled.

Mr. Barshay: On behalf of all defendants we respectfully except.

Mr. Turkus: Mr. Nagle is satisfactory to the People of the State.

Mr. Rosenthal: Peremptory.

Mr. Barshay: Peremptory by all defendants.

Mr. Cuff: Subject to exception.

[fol. 1203] Mr. Barshay: Of course, subject to the exception to your Honor's ruling. We waive no exception in this case.

EDWARD GRODEN, of 215 Corbin Place, Manhattan Beach, was examined as to his qualifications.

By Mr. Turkus:

Q. Mr. Groden, is that the correct pronunciation of the name?

A. That is right.

Q. The trestle board lists your address as 215 Corbin Place; is that correct?

A. That is right.

Q. What section of Brooklyn is that?

A. Manhattan Beach.

Q. And have you lived in that neighborhood for a number of years?

A. Yes, sir.

Q. Have you lived in Brooklyn for many years?

A. Twenty-eight years.

Q. On this trestle board your profession or vocation is listed as that of an auditor.

A. It was at the time.

Q. Are you presently unemployed?

A. No, I am with the bank yet. I am with the First National Bank of New York.

Q. The work that you did as an auditor, was that work limited to figures?

A. Yes.

Q. In connection with books and accounts. Do you do a different type of work now?

A. No, the same.

Q. I take it that you have heard the nature of the charge in this case from the other examinations?

A. Yes, sir.

Q. Do you understand, sir, that the defendants at the bar [fol. 1204] of justice, Buchalter, Weiss, and Capone, are charged with the crime of murder in the first degree, the killing of a man by the name of Joseph Rosen?

A. Yes, sir.

Q. Is there anything about the nature of the charge, namely, that it is a murder case, which would impair or impede your service as a jurymen?

A. No, sir.

Q. May I proceed, then, with the understanding that you have no scruple, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. And in so far as you are concerned, when you deliberate the question of guilt or innocence, you will do so without any notion of the punishment that follows a verdict of guilty?

A. Yes, sir.

Q. Something has been said here by one of the lawyers representing a defendant that he has been heretofore found guilty of crime and is now presently incarcerated in jail as the result of the conviction, and the question then addressed to the prospective talesman was, would there be

any prejudice against that defendant solely because he had been convicted of past crime? What is your answer to that?

A. No.

Q. Taking it one step further, would you be inclined or do you feel that you should relax or deviate from a proper verdict in the case solely because a defendant has been heretofore convicted of a past crime?

A. No.

Q. Will you decide this issue, the guilt or innocence of [fol. 1205] that defendant along with the other defendants for the murder of Joseph Rosen, on the evidence that you hear in connection with this charge?

A. Yes.

Mr. Climenko: Object to the form of the question.

The Court: Overruled.

Mr. Climenko: Exception.

Q. I can go through this rather hurriedly because of the nature of your business, and I will dump it altogether. Do you now have or have you ever had any contact in the Brownsville East New York area of Brooklyn, the Brooklyn waterfront, the clothing or garment districts in Manhattan?

A. No.

Q. Or with clothing truckers?

A. No.

Q. May I go ahead now with the understanding, then, that you know no union officials connected with the Amalgamated Clothing Workers of America?

A. No.

Q. That the names of Weinstein and Katz, Bellanca, Curley Holtz, and the rest are unfamiliar to you?

A. Yes.

Q. Since you received your jury notice, Mr. Groden, did anybody speak to you about the merits of the case?

A. No, sir.

Q. Are you in sympathy with the enforcement of the Penal Law of the State of New York?

A. Yes, sir.

Q. There are nine lawyers here representing these three defendants, former Assistant District Attorney Barshay, former Assistant United States attorney Wegman and his partner, Jesse Climenko; do you know any of those three [fol. 1206] counsel representing Buchalter?

A. No.

Q. Do you know anybody in their law offices, employed?

A. No.

Q. With respect to the defendant Weiss, he is represented by a former judge of the Court of General Sessions in Manhattan, Judge Talley, and a former Assistant District Attorney in Brooklyn, Mr. Cuff, and a former Assistant United States Attorney, Mr. Kriendler. Do you know any of those three gentlemen?

A. I know Mr. Talley. I have known him all my life.

Q. Is that a friendship?

A. No.

Q. You mean you know of him by reputation?

A. Yes.

By the Court:

Q. Do you know him personally?

A. No, I have not seen him in a long time.

Q. Do you belong to the New York Athletic Club?

A. Yes, I did at one time.

Q. When did you leave?

A. I left about seven years ago.

Q. You are a polar bear, aren't you?

A. I was once.

Q. So was I. I thought I recognized you. How long were you a member of the New York Athletic Club?

A. I represented them four years.

Q. You were an athletic director?

A. No, I was a hand-ball player.

Q. That is why you are sunburned over the brows. Is that where you met Mr. Talley?

A. No, I did not meet him up there. He was at St. Francis [fol. 1207] Xavier's College.

Q. Most lawyers belong up there.

By Mr. Turkus:

Q. I think we got to the point, Mr. Groden, where I inquired whether or not you had ever been to dinner with him.

A. No.

Q. You don't visit him socially?

A. No.

Q. That acquaintance goes back to the time you went to the same school?

A. Practically, yes, and I followed his career since then.

Q. Getting right to the nub of the matter, Judge Talley represents a client in this court. Together with two other lawyers, he represents the defendant Weiss. Will the question of Weiss's guilt or innocence for the crime of murder in the first degree as set out in this indictment turn in any wise on your knowledge of Judge Talley?

A. Oh, no, no.

Q. With respect to the other lawyers representing Weiss, do you know them?

A. No.

Q. Capone is represented by Mr. Sidney Rosenthal, Mr. Leon Fischbein, Mr. Emanuel Rosenberg. Do you know any of those three lawyers?

A. No, sir.

Q. Or anybody connected with their law offices?

A. No.

Q. Do you know intimately or socially any member of the bar who specializes in the defense of criminal cases?

A. I know Paul Lockwood.

[fol. 1208] Q. Paul Lockwood is with Tom Dewey?

A. Yes.

Q. Would the question of guilt or innocence of any defendant in this murder case turn on any acquaintanceship that you may have with Mr. Lockwood?

A. No.

By the Court:

Q. That again is New York Athletic Club?

A. Swimming.

Q. Swimming, down at Manhattan?

A. Yes, we——

By Mr. Turkus:

Q. Paul Lockwood is a swimming coach?

A. Yes, he was with the New York Athletic Club.

By the Court:

Q. He was the coach there?

A. Yes.

By Mr. Turkus:

Q. Will you take the law in this case exclusively from Judge Taylor?

A. Yes, sir.

Q. And will you do that regardless of what any lawyer may say the law is, whether it is the prosecuting attorney or any defense lawyer? Is it your understanding and will you take the law only from the trial justice in the case?

A. Yes, sir.

Q. And will you endeavor conscientiously, Mr. Groden, to apply the law to the facts in this case?

A. Yes, sir.

Q. With respect to the Constitutional and other legal rights of the defendant, will you take every piece of law that the Judge gives you with respect to defendants' rights in a criminal case, and apply it to the benefit of the defendant [fol. 1209] in this trial?

A. Yes, sir.

Q. After you have given the defendants every benefit that the law of the land says they should have, and assuming that you feel, after you have heard all the evidence in the case, that you are satisfied beyond a reasonable doubt that these three defendants and every one of them are guilty of murder in the first degree, will you say that in your verdict?

A. Yes, sir.

Q. Do you find any fault with the District Attorney of the County, Judge O'Dwyer, in breaking a case from the inside and using the testimony of a co-participant in the commission of the murder against these men on trial?

Mr. Rosenthal: I object to the question on the ground it is bringing the personal entity of individuals into the trial—improper question.

The Court: That has been asked a great many times, but I cannot conceive of anybody answering it other than it has been answered.

By the Court:

Q. You are not sore on the District Attorney for having somebody turn State's evidence?

A. No.

Q. If that is the fact in the case?

A. No.

By Mr. Turkus:

Q. Do you find any fault, Mr. Groden, with the prosecution of an indictment wherein the testimony of a co-

participant, called an accomplice, is employed against the [fol. 1210] defendants on trial?

A. No, sir.

Q. With respect to the believability or the credibility of testimony emanating from an accomplice, will you apply the rules as given by Judge Taylor?

A. Yes, sir.

Q. And in considering the believability of an accomplice, will you look at every rotten thing the accomplice ever did in his lifetime, from the day he was born, every vicious, every criminal, every immoral act he has ever perpetrated, every criminal he has associated with, and everything on the wrong side of the ledger, in evaluating his testimony?

A. Yes, sir.

Q. Will you look at it with caution?

A. Yes, sir.

Q. By the same token, in looking the case over will you bear in mind that we are here trying a man for the crime of murder in the first degree, and use common sense and understanding in weighing the issue of guilt or innocence?

A. Yes, sir.

Q. May I go along, then, with the understanding that you have no bias or prejudice either against the prosecutor or the prosecution wherein accomplice testimony is used against defendants?

A. Yes, sir.

Q. Will you follow implicitly the instruction of law as to what corroboration is required before there can be a conviction?

A. Yes, sir.

Q. For example, if the Judge tells you that accomplices standing alone cannot supply sufficient information or sufficient testimony to warrant a conviction of murder in the [fol. 1211] first degree or to warrant the conviction of any crime, will you follow that law?

A. Yes.

Q. Should the Judge charge you that it is not necessary that the prosecutor corroborate and substantiate every little detail and every little piece of the testimony, but that the jury may find corroboration from other evidence which tends to connect the defendants with the commission of the crime, will you apply that instruction of law to the facts in this case?

A. Yes, sir.

Q. With lawyers representing the defendants, and each one having a right to talk to the jury, as they properly have, and the law says they must have, will you, if any argument is repeated three times by the lawyers, give it three times the weight because you heard it three times?

A. No.

Q. Have you any knowledge or acquaintance with the District Attorney of the County, personal acquaintance with him?

A. I belong to the Hibernians, Ancient Order of Hibernians, with Judge O'Dwyer.

Q. Would you, in the case where the charge is murder in the first degree, permit membership in an association like the A. O. H., to interfere with the proper result in the case?

A. No, sir.

Q. Do you know Assistant District Attorney Klein or Turkus?

A. No.

Q. Will you, if accepted as a juror in this case, use common sense and understanding in finding out whether the accomplice is telling the truth about the participation of [fol. 1212] these defendants in the Rosen murder and whether or not there is any corroboration from an independent source tending to connect the defendants with the commission of the crime? Will you do that to the best of your ability as the Judge explains the law should be applied?

Mr. Climenko: Object to the form of the question.

The Court: Overruled.

Mr. Climenko: Exception.

Q. I think you said you would; is that right?

A. Yes.

Q. If selected as a juror in the case, will you by your verdict endeavor to do justice in this case?

A. Yes, sir.

Q. Will you discuss the case with common sense and understanding and listen to reasonable discussion by the other jurors?

A. Yes, sir.

Q. If at the conclusion of the entire case, after you have heard every piece of testimony in it and every argument that the defense lawyers make to the jury, and you as one

of them, and every argument the prosecutor gives, the learned charge on the law from the Court, sensible discussion with your fellow jurors and your conscience and your mind is satisfied beyond a reasonable doubt that there are three guilty men, guilty of the Rosen murder, will you say so in your verdict?

A. Yes, sir.

Q. Would you have any fear, hesitation, or reluctance in pronouncing a Guilty verdict, if it meets with the burden that the law says is on the District Attorney, to establish [fol. 1213] guilt beyond a reasonable doubt?

A. No.

Q. Will you have any fear or reluctance?

A. No.

By Mr. Barshay:

Q. Mr. Groden, as the other juror was being questioned, did you form and bias at all against the lawyers for the defense because of what transpired?

A. No.

Q. I take it you are under the impression that we believe that we are fighting for what we think is right?

A. Right.

Q. Nothing to do with the case?

A. No.

Q. You understand that. You said you are a member of the A. O. H. Do you know Judge O'Dwyer personally?

A. Well, he has been around at meetings and here and there.

Q. You heard him speak?

A. Oh, yes.

Q. Many times?

A. Yes.

Q. Do you know his brother Paul?

A. The lawyer, yes.

Q. President or former president or organizer?

A. No, not very well.

Q. You know him, don't you?

A. I know him.

Q. Do you know John Rooney, Assistant District Attorney?

A. Very well.

Q. Do you know Mr. Hoey, an Assistant District Attorney?

A. No, sir.

Q. Do you know Kenneth McCabe?

A. No.

Q. They are all members of the A. O. H., to my knowledge.

A. It has been some time since I have been there. Rooney [fol. 1214] was president when I was there.

Q. So that Rooney and Judge O'Dwyer and his brother you know better?

A. Yes.

Q. You have heard them speak there about crime?

A. No, not about crime.

Q. Do you see Rooney socially?

A. Yes, I have known him years.

Q. He is one of the leading lawyers for Judge O'Dwyer. Do you discuss his work?

A. No.

Q. At any time have you discussed his work?

A. When he was running for the office I tried to work for him.

Q. You were a booster of his?

A. Very much so.

Q. And of course you know, sir, that he was part and parcel of Judge O'Dwyer's staff?

A. Yes.

Q. I take it, with great pride you are a booster of Judge O'Dwyer too?

A. Yes.

Q. I take it, too, that you will participate most actively in his election?

A. No, I live in the same section with Rooney. I did go out and work.

Q. Of course you did.

A. Certainly I did.

Mr. Talley: Keep your voice up, please.

Q. I take it, with a great deal of pride you have watched the success of Judge O'Dwyer?

A. Yes.

Q. And you believe the causes which he sponsored?

A. Oh, yes.

Q. And have you reached a point that Judge O'Dwyer's office would not bring about an indictment in any case [fol. 1215] unless they felt sure?

A. Positive.

Q. You are positive of that?

A. Positive of that.

Q. So that as the result of that belief did you form any impression with respect to the defendants?

A. Will you repeat, please?

Q. As the result of the belief that you said, that anything Judge O'Dwyer may sponsor, or whatever the language was, you have positive faith in, do you believe, sir, now, by virtue of the accusation against the defendants, that you have some prejudice or bias against them?

A. No, sir; no, sir.

Q. Do you say now, sir, that you are free of bias or prejudice against the defendants in this case?

A. No, I don't say that.

Q. You don't say that?

A. No.

Q. And I take it, then, that it will be most difficult for you to lay aside that prejudice and bias, won't it?

A. This bias is not based on this particular case; it is based on the general set-up of the whole.

Q. That is right. You have a right to your opinion, sir. And it would take evidence to remove that bias?

A. No, it would not. I could have that bias after this case is over, irrespective of whether these men are guilty or innocent.

Q. In other words, you have it now and you may have it after the case?

A. Right.

Q. Is that your idea?

A. That is my idea.

[fol. 1216] Q. May I know what you will do with it during the case?

A. It won't be bias in this case. It will be the general set-up will be the bias. It would not be the bias in this particular case.

Q. Supposing one of them takes the stand and his credibility, that is, whether or not he should be or should not be believed, should become an issue for you to decide; would you use that bias against him?

Mr. Turkus: That is a legal question.

Mr. Barshay: Of course it is.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. Could you remove that bias against them then? If he takes the stand and offers himself for cross-examination, it will be up to you to decide whether or not you should believe him.

Mr. Turkus: I object.

Q. Or you should not believe him. Wouldn't the bias weigh in determining that judgment?

Mr. Turkus: I object to it.

A. No, sir.

Q. Did you read about the case?

A. Yes, sir.

Q. Often?

A. I read some of the articles in The Mirror about the case, not this case.

Q. But the defendants?

A. Yes.

[fol. 1217] Q. You read about it since you have been called as a juror?

A. No.

Q. Did you form an opinion with respect to the defendants while you were waiting here, sir?

A. Not in this particular case I didn't.

Q. Did you form an opinion detrimental to them with respect to anything at all?

A. Yes, sir, I did.

Q. And so that if these men against whom you said you formed a detrimental opinion, are accused of crime, isn't it a fact that it will take less evidence to convince you of their guilt because of that bias or prejudice?

Mr. Turkus: Object to that. That is a legal question, on the quantum of proof, which the jury must take from the Court.

The Court: Overruled.

Q. (Pending question read.)

A. No.

Q. It would not?

A. No.

Q. Would you more easily believe things said against them because of that bias?

A. No.

Q. Would you require them, if the Court shall tell you that a defendant need not prove anything at all, would you require them to offer some evidence in this case?

A. No, sir.

Q. Would you require them to explain any accusation in this case?

A. No, sir.

Q. Should they choose to remain silent, and if the Court tells you that no unfavorable inference can be drawn against [fol. 1218] them for their failure to take the stand, will you tell me, sir, will you follow that law?

A. Yes, sir.

Q. And so, is that bias that you have against them generally, something that you can wrap up and lay aside?

A. I don't know whether I can explain it, but it is not with respect to this case, this prejudice and bias, but it is a general—

Q. I know that. In other words, they don't start off in this case free and clear in your mind of any prejudice or bias with respect to anything at all. They don't start off at scratch with you, do they?

Mr. Turkus: I object to it. It is an ambiguous question and it is a double question.

The Court: It is ambiguous. Sustained.

Q. Do these gentlemen start off at scratch with respect to this case?

Mr. Turkus: I object to it. That is an ambiguous question.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. You honestly said exclusive of this case you are biased against these men?

Mr. Turkus: Objected to. It is repetitious now.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. You know Paul Lockwood, don't you?

A. Yes, sir.

Q. How intimately do you know him?

[fol. 1219] A. I have known him intimately for years. I knew him intimately for years.

Q. You know he has been a chief assistant to the District Attorney, too?

A. I know.

Q. You have a lot of faith in him?

A. Yes.

Q. Did you discuss the matter with him?

The Court: Mr. Dewey.

Q. He knows that. You know he is assistant to Dewey?

A. I know.

Q. Did you discuss any criminals with him?

A. Oh, sure.

Q. Many times?

A. Many times.

Q. You took at face value what he said to be true?

The Court: You and he used the same locker room?

The Talesman: Well, we were very close, Judge.

Q. As the result of your association with him, have you any bias against people charged with crime?

A. Yes, sir, I have.

Q. You have it here? You have it here? You have a prejudice against people charged with crime?

A. Convicted of crime.

The Court: Against people——

The Talesman: Convicted of crimes.

Q. You have a prejudice against people convicted of crimes?

A. Yes.

Q. No doubt about that? So in this case it has been said very often that one of the defendants has been convicted of crime and is incarcerated for a long time. Have you a prejudice against him?

A. Yes.

[fol. 1220] Q. You have. And you will not be able to lay aside that prejudice?

A. That prejudice has nothing to do with this crime that is committed now.

Q. You say now that prejudice too can be wrapped up in a bundle and laid aside?

Mr. Turkus: That is argumentative.

A. Yes.

Q. Now, there may come a time when the District Attorney's office will urge upon you, if you are chosen as a juror, its interpretation of certain testimony here. They may say it totals up to A, B, or C. Lawyers for the defendant may say it totals up to X, Y, and Z. You know Judge O'Dwyer and you know Mr. Rooney and you know—we will limit ourselves to them—and you had a lot of faith in what they stand for. Wouldn't it influence you to accept the District Attorney's version of the testimony with respect to their interpretation?

A. No.

Q. It would not?

A. No.

Q. If each side contends directly opposite views with respect to interpretation of testimony already in issue in this case, wouldn't you be more inclined to favor the District Attorney's version by virtue of your knowledge of those men and the faith you have in their integrity?

Mr. Turkus: Objected to. It is argumentative and repetitions. He has already said no.

[fol. 1221] The Court: He has already answered.

Mr. Barshay: May he answer again, Judge, in the interest of saving time?

The Court: No.

Mr. Barshay: Respectfully except.

Q. Supposing the time may come when one of the witnesses who takes the stand will be asked about promises made to him and hope of reward held out for him, and we say that the District Attorney's office are the people who made those promises to him, and he denies that fact, and it becomes a question for you to decide whether you shall or shall not believe him, would your knowledge of Judge O'Dwyer, or Mr. Rooney, or anyone in that office, cause you to be influenced in their direction?

A. No.

Q. Not at all?

A. Not at all.

Q. If Mr. Turkus in summation should argue that Judge O'Dwyer never promised a single hope of reward to any witness for his testimony, and we argue just the contrary, wouldn't you be inclined, because of your knowledge and faith in Judge O'Dwyer, to accept his version in preference to ours?

A. No.

Q. You would not?

A. No.

Q. Is that somewhat inconsistent with your positive persuasion that every cause Judge O'Dwyer sponsors must be correct?

Mr. Turkus: Objected to, argumentative.

The Court: Sustained.

[fol. 1222] Mr. Barshay: Respectfully except.

Q. Do you know anybody else in that office?

A. Not a soul.

Q. Did you ever hear them lecture on crime?

A. No.

Q. Did you know a Captain William Kleinman?

A. No.

Q. Never met him?

A. No.

Q. That is the William W. Kleinman whom Mr. Turkus has reference to. He left his practice to go to the Army as a captain. You do not know him?

A. No.

Q. Do you know Mr. Sol Klein, now the Assistant District Attorney actively engaged, who before he became an Assistant was associated in the practice of the law with Captain William W. Kleinman?

A. No.

Q. And Mr. David Price?

A. No.

Q. Do you know Mr. Joseph, who is both on the staff of Mr. Geoghan and Judge O'Dwyer?

A. No.

Q. Do not know him?

A. No.

Q. Have you formed any opinion up to this very minute with respect to the guilt or innocence of any of the defendants?

A. No, sir.

Q. You told Mr. Turkus that you would accept with caution the testimony of accomplices, would you not?

A. Yes, sir.

Q. He said to you, "Take into consideration all the rotten things they did," putting it mildly, "all the rotten things they did."

Mr. Turkus: I object to it as far as it has gone, "putting [fol. 1223] it mildly." I do not know how I can say it any better. I object to it.

The Court: He was not a bit mild.

Mr. Barshay: Mildly by comparison to what we shall urge, sir. I withdraw the question.

Mr. Turkus: I withdraw the objection.

Q. You said you would take into consideration all the criminal acts of those accomplices; isn't that so?

A. I did, yes.

Q. Would you take also into consideration the fact that all the acts of criminality which they admit have gone unpunished to this very day?

Mr. Turkus: I object to any such improper speech-making.

The Court: Sustained.

Mr. Barshay: Respectfully except. I did not finish the question, sir.

The Court: Finish it.

Q. If that shall be established by competent testimony from this witness stand.

Mr. Barshay: Now will your Honor rule?

The Court: Improper as to form.

[fol. 1224] Q. Would you accept that kind of testimony of men whose crimes they admit out of their own mouths are so many that it would take years to prosecute them for each and every single crime they admit doing and for which they have not been prosecuted?

Mr. Turkus: I object to that.

The Court: Sustained.

Mr. Barshay: Mr. Turkus does not let me finish my questions.

Mr. Turkus: I am sorry.

The Court: Go ahead.

Q. Would you accept with caution the testimony of men who out of their own mouths, be they accomplice or not, have admitted the commission of so many crimes that it would take a long time to prosecute them for each and every one of the crimes they admitted; would you take their testimony into consideration if you find that for those very crimes they have been given immunity?

Mr. Turkus: Objected to. That is an improper type of question.

The Court: Yes, the length of time it would take to prosecute has nothing to do with it.

Mr. Barshay: Is that the only objection? I will strike out the length of time.

By the Court:

[fol. 1225] Q. Would you accept with caution the testimony of an admitted accomplice who gets immunity for his crimes?

A. With caution?

Q. Yes.

By Mr. Barshay:

Q. In other words, you would not be so ready to believe him?

A. No, sir.

Q. You would want to know why all of a sudden virtue has entered his system and he is becoming a witness for the prosecution, wouldn't you?

Mr. Turkus: Just a minute. I object to this.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. Well, at any rate, sir, before you as a juror will be convinced that that man is telling the truth, you will want to know, first, who is he; second, what was he; third, what does he hope to gain by giving such testimony?

Mr. Turkus: I object to the form of the question. Those are the things a juror may take into consideration, and I object to it.

The Court: Overruled.

By the Court:

Q. Would you consider everything?

A. Everything relevant.

Mr. Barshay: I do not understand that.

[fol. 1226] Q. You might put it this way: that testimony of an accomplice, admitted accomplice, should be viewed with suspicion and accepted with caution. If the Court should so charge you, will you follow it?

A. I would.

By Mr. Barshay:

Q. That goes not only to an accomplice, but to every witness, whether he is an accomplice or is one who is offered as a corroborator.

Mr. Turkus: I object to that. That is an improper statement.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. Would you accept with caution the testimony of any witness who takes the stand here and says, "I have led a life of crime"? Would you?

A. Would I accept it?

Q. With caution.

A. With caution.

Q. What?

A. Extreme caution.

Q. Isn't that so? Now, if testimony is given subject to two interpretations, the Court tells you that then you must give defendant the innocent interpretation, will you do that?

A. Yes, sir.

Q. Will you insist that the other jurors do that?

A. Yes, sir.

Q. Do you believe, sir, that a Grand Jury can indict an innocent man?

A. Yes, sir.

[fol. 1227] Q. And so you firmly believe in the presumption of every person charged with crime—the presumption of innocence?

A. Yes, sir.

Q. You understand that, don't you?

A. Yes.

Q. Do you believe that this indictment has any evidentiary value of the Court shall tell you that it has not?

A. No.

Q. Even though Judge O'Dwyer is the person who brought about that indictment?

A. Yes, sir.

Q. Still think?

A. Yes, sir.

Mr. Turkus: There is an improper statement of law there. I don't think Mr. Barshay realizes it, but I think he will take it that the Grand Jury found the indictment, not Judge O'Dwyer.

Mr. Barshay: Well, if you want to be technical, the Grand Jury found the indictment on the presentation of Judge O'Dwyer.

Q. You understood what I mean?

A. Yes.

Mr. Turkus: On the presentation of evidence. I object to an improper construction of law. It should not come from the lawyers anyway; it should come from the Judge.

The Court: Sustained.

Mr. Barshay: I notice you have quoted considerable law.

Mr. Turkus: Well, I try to be accurate.

[fol. 1228] Mr. Barshay: I do too. We are both wrong sometimes.

Mr. Turkus: You were wrong this time.

Mr. Barshay: I am not wrong this time. The evidence was presented here by Judge O'Dwyer—a member of his staff.

Q. Does that interest you?

A. No, sir.

Q. That is in the nature of a promissory note, that Mr. Turkus will in this court-room give proof beyond a reasonable doubt of the guilt of the defendants.

Mr. Turkus: I object to the question on the ground of the preamble that that is in the nature of a promissory note. It is not.

The Court: The simile may not be accurate.

Mr. Barshay: I borrowed that expression from the greatest lawyer I know, Judge.

The Court: Wel—

Mr. Barshay: I will give it back to him.

The Court: Sometimes promissory notes are no good.

Q. And the burden of proof you will demand shall always be upon the prosecution, won't you?

A. Yes, sir.

Q. And you will never demand any shifting of the burden of proof, because that is what the law does not mean; isn't that so?

A. That is right.

Q. Now, Mr. Turkus has said would you be influenced by the fact that three lawyers will repeat the same argument.

[fol. 1229] Mr. Turkus: Objected to. That was not the statement. I used the word "if".

The Court: Finish your question.

Q. All right, "if". We will put the word "if."

A. Will you repeat it.

Q. If three lawyers repeated the argument three times, would you be more influenced by the repetition?

A. No.

Q. You said that to Mr. Turkus. You are not of the belief, are you, that the respective counsel for the defendants are here to repeat argument merely for the sake of repetition?

A. No.

Q. You have a belief that I have a right to urge whatever arguments benefit my client, don't you?

A. Yes, sir.

Q. You have a belief that Judge Talley has an equal right?

A. Yes, sir.

Q. You have a belief that Mr. Rosenthal has an equal right?

A. Yes, sir.

Q. And if it happens that the arguments coincide with one another, that would not be to our clients' detriment?

A. No, sir.

Q. You would not deem that boredom or repetition, would you?

A. No, sir.

Q. Do you believe you can hold the evidence given against one defendant as against that defendant only, unless otherwise instructed by the Court?

A. Yes, sir.

Q. Can I have your promise that you will not bunch it together?

A. Yes, sir.

[fol. 1230] Q. And draw one conclusion therefrom?

A. Yes, sir.

Q. In reality do you understand that each defendant here is getting a separate trial at your hands?

A. Yes, sir.

Q. Have you ever been a victim of a crime?

A. No, sir.

Q. Has your company?

A. What kind of crime?

Q. Any kind of a crime.

A. Thefts.

Q. Has that caused a prejudice in your mind against people that are charged with crime?

A. No, sir.

Q. Have you been a juror before?

A. Yes, sir.

Q. Where?

A. Here, in this court.

Q. Were you a special juror?

A. Yes, sir.

Q. How long ago?

A. About six months ago, seven months ago.

Q. Before whom, please?

A. Judge Fitzgerald.

Q. Judge Fitzgerald?

A. Yes.

Q. Was it a murder case?

A. Yes, sir.

Q. And it came to a conclusion?

A. Yes, sir.

Q. May I know the month, please?

A. I could not remember that. I think it was about seven or eight months ago.

Q. Was Mr. Kleinman the attorney in that case?

A. Yes.

Q. Was Mr. Price one of the attorneys in that case?

A. Yes, sir.

Q. Was Judge Healy one of the attorneys in that case?

A. I don't remember that name.

Q. Was Judge Pryor one of the attorneys in that case?

A. I don't remember him.

Q. Was Mr. Turkus the prosecutor in that case?

A. No.

[fol. 1231] Q. Do you know who was?

A. Mr. Hanley.

Q. Mr. Joseph Hanley?

A. Joseph Hanley.

Q. Do you remember my name being mentioned in that case, in the testimony?

A. No, I don't remember it.

Q. Do you remember my being in court then?

A. No.

Q. That case came to a conclusion?

Mr. Turkus: That is repetitious; I object.

Mr. Barshay: I forgot I asked it, Mr. Turkus.

Mr. Turkus: All right, don't fight with me. I withdraw it.

Mr. Barshay: You are fighting with me.

Mr. Turkus: I am sorry. Go ahead.

Q. As the result of being a juror in that case, sir, have you formed any prejudice against people charged with crime?

A. No, sir.

Q. Especially murder?

A. No, sir.

Q. Did you serve on any other jury?

A. No, sir.

Q. Have you ever been called for any other jury?

A. Yes, sir.

Q. Were you on the Grand Jury at any time?

A. No, sir.

Q. Do you belong to any law enforcement agencies?

A. No.

Q. Do you belong to any societies for the prevention of crime?

A. No.

Q. Do you belong to the K. of C.?

A. No, but I lived in the clubhouse for a while.

Q. You lived in the clubhouse?

A. For about a year.

[fol. 1232] Q. At 1 Columbus Circle?

A. Yes.

Q. You are married, I take it?

A. No.

Q. Do you know people at the clubhouse?

A. Yes.

Q. How long did you live there?

A. About a year.

Q. Do you know a lot of police visit that K. of C.? Do you?

A. No.

Mr. Turkus: I object to it.

Q. Do you know any police who visit——

Mr. Turkus: Please, Mr. Barshay.

The Court: He says no.

Q. Do you know any policemen intimately?

A. Intimates?

Q. Do you?

A. Do I know them?

Q. Yes.

A. No.

Q. Do you know any detectives intimately?

A. No.

Q. Do you know Joe Ryan, head of the International Longshoremens Union?

A. No.

Q. Do you know the name of Rice and McGuire?

A. No.

Q. Nor especially Mr. McGuire of that firm?

A. No.

Q. You never met him?

A. No.

Q. Do you belong to the Grand Jurors Association?

A. No, sir.

Q. If the Court shall charge you that character plays no part in the prosecution of any case unless put in issue by the defendants or any of them, do you think you could follow that instruction?

A. Yes.

Q. Have you received definitions of reasonable doubt [fol. 12.3] from the other Judge, I take it, whoever presided at that trial?

A. Yes.

Q. Have you got it fresh in your mind?

A. Yes.

Q. In the discussion of this case, if you are chosen as a juror, would in any wise the facts that happened in the other case in which you sat as a juror come to your mind so that you could use it as an example or base any argument in this case?

A. No.

Q. If similar propositions of law were to come up as charged by the Court, and those that came from this Court may differ from the ones that you heard from Judge Fitzgerald, which one would you accept, sir?

Mr. Turkus: I object.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. You would not let your recollection of what happened in the other case have any influence in this case?

A. No.

Q. If there comes a time when you as an individual juror shall not have been convinced by the evidence in this case beyond a reasonable doubt as to one or the other of the defendants, and others have reasoned with you and talked to you and explained to you and you, without being stubborn or persistent, just felt as an individual that there is a reasonable doubt, would you yield to those jurors because they outnumbered you?

A. No.

[fol. 1234] Q. Would you fight just as much for the rights of the defendants as you would for the prosecution's rights?

A. Yes.

Q. Do you feel as though the defendants are part and parcel of The People of the State of New York, as well as you and I?

A. Yes.

Q. And that the benefits of the law are for them? Do you?

A. Yes.

Q. It takes courage to say "Not guilty" if you are not convinced beyond a reasonable doubt. You know that, don't you?

Mr. Turkus: I object to the form of the question. It does not take courage at all.

The Court: Sustained.

Mr. Turkus: If you are not convinced.

Mr. Barshay: We differ on that. I say it takes lots of courage.

Q. Whether it does or it does not, have you sufficient courage to say, "I as an individual in this jury room have a reasonable doubt and I will not vote for Guilty"?

A. Yes.

Q. You realize that nobody has a right to express an opinion with respect to a defendant's guilt or innocence other than you, based upon the evidence in this case?

Mr. Turkus: That is a double question now.

The Court: I take it you mean each man must decide it for himself.

Mr. Barshay: That is exactly what I said, Judge.

[fol. 1235] Q. You understand that, don't you?

By the Court:

Q. You will make your own decision?

A. Yes, sir.

Q. You won't let anybody else tell you what to do if you do not agree with them?

A. No, sir.

By Mr. Barshay:

Q. And so, to sum it up, you believe that Mr. Buchalter can entrust to you, to your safeguard, his legal rights, given to him by law as a right; you believe that?

A. Yes.

Q. And that is a fact even though you know Judge O'Dwyer and Mr. Rooney and all the rest?

A. Yes.

Mr. Barshay: May we suspend now?

The Court: No.

By Mr. Talley:

Q. Mr. Groden, is it your belief that a person charged with crime should stand up and defend himself against that charge?

A. No, sir.

Mr. Turkus: That is a legal question.

The Court: Sustained.

Mr. Talley: Exception.

Q. If the Court should charge you that it is the right of any defendant charged with crime through an indictment such as we have here not to take the stand, not to open his mouth, but that the burden of proving his guilt is always upon the District Attorney, and that burden carries right [fol. 1236] through the case from beginning to end, would you accept that law from the Court and act upon it accordingly?

A. Yes, sir.

Q. If a defendant did not take the stand, would you indulge in any unfavorable inference against him because he did not?

Mr. Turkus: That is a question of law.

Mr. Talley: It is not a question of law.

Mr. Turkus: I am talking to your Honor. I have an objection.

The Court: Sustained.

Mr. Talley: Exception. I must confess I am at a loss to know what the District Attorney means by objections.

Mr. Turkus: The Judge understands and sustains me. You are not the judge here.

Mr. Talley: That is a wise observation. It does not take a very smart man to say that. The Judge is on the bench.

Mr. Turkus: You said you are at a loss to understand my objections. The Court understands.

Mr. Talley: I certainly do. I am equally at a loss to understand why the Court sustains them.

The Court: I can clarify it in a minute.

By the Court:

Q. If the Court should charge you that the defendant [fol. 1237] does not have to take the stand and that no inference of guilt may be found against him because of that failure, will you follow that instruction?

A. Yes, sir.

Q. And have no prejudice against him on that account?

A. No.

By Mr. Talley:

Q. Mr. Groden, isn't it a fact that because this indictment was filed at the instance of District Attorney O'Dwyer, that you will start out in this case with the im-

pression that the indictment would not have been found unless Judge O'Dwyer thought these men were guilty of crime?

[fol. 1238] Mr. Turkus: I object to the form of the question.

The Court: Sustained.

Mr. Talley: Exception.

Q. Did you read the account of Judge O'Dwyer's career as published serially in one of the New York newspapers recently?

A. Yes, sir.

Q. You read all the instalments, did you?

A. Not them all, no.

Q. Did you observe that any of these defendants were named in those articles?

A. I don't remember.

Q. You don't remember?

A. That they were named in the articles? I rather was impressed with the Judge.

Q. I do not hear you.

A. I was impressed with the rise in the world of Judge O'Dwyer, rather than these cases.

Q. Yes, and you formed a very favorable impression about Judge O'Dwyer?

A. Absolutely.

Q. And you have absolute confidence in his ability and integrity?

A. Yes, sir.

Q. And that confidence in his ability and integrity you would carry into the jury box, if selected in this trial, wouldn't you?

Mr. Turkus: I object to it. I don't see that that goes to qualification.

The Court: Sustained.

Q. You would be inclined to favor Judge O'Dwyer's conduct? [fol. 1239]

A. No.

Q. As to the guilt or innocence of these defendants, wouldn't you?

A. No.

Q. You would not place any more reliance in what one of Judge O'Dwyer's assistants would say to you about this

case than you would in what the lawyers for the defense would say about it; is that right?

A. That is right.

Q. Did you read any articles about Judge O'Dwyer or about these defendants than those which appeared in the New York Journal?

A. I read The Mirror.

Q. Anything else?

A. No, that's all.

Q. From the reading of the Mirror articles did you form any impression about these defendants?

A. Yes, I did.

Q. And was that impression unfavorable to them?

A. Absolutely.

Q. And it will take some evidence in this case to remove that impression, won't it?

A. No, sir.

Q. Well, what would remove it from your mind?

A. I don't think anything would remove it.

Q. In other words, it could not be removed?

A. That is so.

Q. That is what you mean?

A. Yes, sir.

Mr. Talley: I challenge the juror for cause.

The Court: Try the challenge.

(EDWARD GRODEN of 215 Corbin Place, Manhattan Beach, was duly sworn.)

By Mr. Talley:

[fol. 1240] Q. Mr. Groden, if I ask you the same questions, now that you have taken an oath, that I have just asked you before you took the oath, your answers would be the same, would they not?

A. Yes, sir.

Mr. Talley: I press the challenge.

Mr. Turkus: That is not a sufficient challenge.

The Court: Any other questions by anybody?

Mr. Barshay: No further questions. We all press the challenge.

The Court: Anything further by you, Judge Talley?

Mr. Talley: No other questions on this challenge.

The Court: Any by you?

Mr. Turkus: No, I contend on the basis of his question—

The Court: You do not have to argue it. He has not said it would affect his judgment in this case.

Mr. Turkus: That is right.

The Court: Overruled.

Mr. Talley: Exception.

Mr. Barshay: To all of us.

Mr. Talley: Counsel joins me in requesting that, the time having arrived for our usual recess, we recess now.

The Court: Of course, that was the understanding, and the Court will live up to it, but I think you will be a little kind to the Court if in the next few days the jury box is not filled the Court may have to consider night sessions. Just now we will go according to the agreement made at the start of the trial.

[fol. 1241]

Brooklyn, N. Y., October 6, 1941.

Trial Resumed

(By direction of the Court, the following talesmen were called to fill the jury box: Cecelia B. Schwartz, No. 2796; John J. Rose, No. 2597; Walter Odland, No. 2586.)

The Court: All other talesmen may go until five o'clock this afternoon.

EDWARD GRODIN, No. 2718, was then recalled to the stand and examined further as to his qualifications.

Mr. Talley: My recollection is, if your Honor please, that while the talesman was on the stand at the conclusion of the session, we asked him about the impression of prejudice he had; he was asked if he would like to have it removed by evidence, and he said absolutely not. Then I think we challenged him for cause, and I believe your Honor overruled the challenge.

The Court: Are you speaking of a recollection of the record?

Mr. Turkus: My recollection is that when the challenge had been overruled and the defense counsel come to a point

where they were making inquiry as to some impressions, that then we took a recess.

Mr. Talley: I will try to resume where my recollection left off.

[fol. 1242] The Court: Yes, there is every reason why counsel should remember examinations; there is every reason why the Court should not remember it when the challenge was tried and disposed of.

By Mr. Talley:

Q. My recollection is that when we were speaking to you on Friday afternoon you said you had formed an impression in respect to one or more of these defendants; do you remember that?

A. Yes, sir.

Q. You told us you did form an impression?

A. Yes, sir.

Q. Now, it would take evidence in the case to remove that impression from your mind if you were selected as a juror, isn't that so?

The Court: I understood the challenge had been tried and disposed of.

Mr. Talley: I am not sure about it.

The Court: We are not going to try a challenge twice. [fol. 1243] Hereafter there will be no shift in stenographers during the interrogation of any one talesman. We will wait until the stenographer arrives who took the examination on Friday afternoon.

Mr. Talley (to reporter): Will you be good enough to read the last few questions and answers that were put to this juror, Mr. Groden?

The Court: You want to find out what the challenge precisely was for?

Mr. Talley: I want to see where we left off.

(The last few questions and answers of October 3, 1941, were read by the reporter.)

Mr. Talley: I have no further questions of this talesman.

By Mr. Rosenthal:

Q. Mr. Groden, what are your actual duties with the bank, would you mind telling us?

A. It is rather general. I am a semi-official, maybe you would call that.

Q. Semi-official?

A. Yes.

Q. Just what does that mean, sir? I hate to show my ignorance of that particular line of work.

A. We deal in gigantic bond issues and things like that, and these come up from time to time and I take semi-charge of those issues.

Q. You mean you do promoting of bond issues?

A. Yes.

[fol. 1244] Q. Are you a salesman?

A. No, I don't go outside. I do the clerical work on the issue.

Q. Did you use to play handball down at Brighton Beach?

A. Yes.

Q. Did you use to play with a number of detectives down there on the beach?

A. Only one. He was not a detective.

Q. What was the name of the one that you played with?

A. I can't think of his name.

Q. Did you play with Detective McCarthy?

A. No.

Q. Do you know Detective McCarthy?

A. No, sir.

Q. What is the name of the one that you played with?

A. He is a lieutenant. He was a telegrapher in Police Headquarters. He is a member of the Trinity Club.

Q. Did you play with a number of policemen down in Brighton Beach?

A. They are always around, but I did not have anything to do with them.

Q. Have you any relatives on the police force?

A. No.

Q. Any close friends in police circles?

A. No.

Q. At the K. of C. clubhouse, where you lived, there are a number of police officers live there, aren't there?

A. No, I did not know any of them.

Q. Did you know Detective Vigiano?

A. No, sir.

Q. Were you very active in the A. O. H.?

A. No.

Q. However, you followed the activities of Judge O'Dwyer?

A. Yes, sir.

[fol. 1245] Q. You followed them with great interest, I think you told Judge Talley.

A. Yes, sir.

Q. You would like to see him elected Mayor, would you?

Mr. Turkus: Just a minute——

Mr. Rosenthal: That is preliminary to another question.

Mr. Turkus: He has no right to know how a man would vote, and I am trying——

The Court: Is there an objection?

Mr. Turkus: There is.

The Court: Sustained.

Mr. Rosenthal: Exception.

By the Court:

Q. Do you know Mr. Cuff of counsel for defense?

A. No, sir.

Q. He is quite prominent in the A. O. H.

A. I used to be.

Q. You are no longer there?

A. I am not active, but I am in. I used to be very active.

Q. Still active? You were president at one time?

A. Yes, that is right.

By Mr. Rosenthal:

Q. Do you intend to take an active part in the coming campaign?

A. No.

Q. Do you belong to any political association?

A. Beg pardon?

Q. Do you belong to any political association?

A. No.

Q. And you have read articles in The Mirror, have you not, sir?

[fol. 1246] A. Yes, sir.

Q. How recently was the last article that you read?

A. Well, when they told me not to read them before this trial I did not read no more.

Q. Was that after you had met here in September or was it when you were originally called in August?

A. Prior to when I was originally called.

Q. You say when they told you not to read them any more is when you stopped?

A. I did not read them with any degree of interest in this case.

Q. I am not asking you how much interest you displayed, Mr. Groden. You just told me that when they told you to stop reading them is when you stopped reading them; isn't that right, sir?

A. No, that is not right.

Q. Did you not just say a few minutes ago, when you were told not to read them any more you stopped reading them? Isn't that your answer to my question just a few minutes ago?

A. I stopped reading them. I stopped before that.

Q. Please. I just want to know if I—

Mr. Turkus: I object to it; it is argumentative.

Mr. Rosenthal: I am asking the man now, as I mentioned, Judge, what he formerly said.

By the Court:

Q. Mr. Rosenthal wants to know when you completely stopped reading, whether it was September or August?

A. I never read them with any degree of interest. I can't [fol. 1247] tell you when I stopped reading them.

Q. The Court first advised you not to read when the case was on about the 4th of August. I think that was the day.

A. That is right.

Q. Did you stop then?

A. I did not buy the paper to read this case.

Q. Have you read anything since about the case?

A. No.

By Mr. Rosenthal:

Q. You say you also read the Journal, did you, sir?

A. I read an account. I think it was in the Journal.

Q. How long ago was the account that you read in the Journal?

A. I can't tell.

Q. Can you give me any idea, sir?

A. I could not give you an idea when I saw this article in the Journal.

Q. You also stated that you were a special juryman and actually served six months ago, is that right?

A. I did not say six months. I said maybe six, or maybe eight, but now that I think, it is more than that. It was in the summer time of last year, the late summer.

Q. Is it less than a year ago?

A. I think it is about a year ago.

Q. Did you make any application to be excused as a jurymen in this case?

A. No, sir.

Q. Did you also read any other newspapers? Did you [fol. 1248] read any other newspapers in addition to the Mirror and the Journal?

A. I read the Sun. I read the Tribune. I read——

Q. The World-Telegram?

A. Very seldom I read the Telegram.

Q. Did you read any articles in either of these three papers that I just mentioned, other than the Mirror and the Journal in respect to any of these defendants?

A. I read headlines about them. I glanced through the paper, the same as anything else.

Q. Because of what you read and prior to your acceptance for jury service, had you formed any impression concerning any of the defendants?

Mr. Turkus: Objected to. That challenge has been tried and disposed of.

Mr. Rosenthal: I am independently questioning. I have not questioned yet, and I am questioning now on behalf of the defendant Capone, and Capone solely. I have a perfect right to question him.

The Court: The Court on the trial of the previous challenge on that very ground asked if any other counsel for defense wished to question the talesman on that challenge. You had your opportunity.

[fol. 1249] Mr. Rosenthal: I am now questioning independently, sir, for the purpose of satisfying my own mind as to whether this jurymen from my standpoint, on behalf of one defendant, is satisfactory to me, and I submit that I am entitled to generally question him on all subjects. If your Honor overrules my thought, I will merely take an exception and go on to another point, sir.

The Court: The Court rules that when a challenge is tried, that all counsel must participate, if they wish, and if they don't, they waive their right on that point. The

incident then becomes closed. The Court will not permit, with so many defendants in the case, a separate challenge by each defendant upon the same point, a separate trial. That would be ridiculous. The Court sustains the objection.

Mr. Rosenthal: I respectfully except to the Court's ruling. In view of the Court sustaining the objection, I have no further questions to ask. May I have it appear on the record, the purpose of my asking the question, sir, is a general question so as to enable me in my own mind to determine whether or not on behalf of the defendant that I represent, this juror is qualified to serve.

The Court: The Court rules, and exception may be taken, but post mortems are not permitted. The Court will strike that from the record.

[fol. 1250] Mr. Rosenthal: I respectfully except.

Mr. Turkus: Mr. Groden is satisfactory to The People's side.

The Court: Wait a minute for other counsel.

By Mr. Barshay:

Q. Since you left the stand Friday afternoon have you read about this case?

A. No, sir.

Q. Have you discussed this case?

A. No, sir.

Q. With anyone at all?

A. No, sir.

Q. And presently are you still of that state of mind which includes a prejudice against one of the defendants which no amount of evidence will remove?

Mr. Turkus: I object to it.

The Court: Objection sustained upon the ground stated when Mr. Rosenthal attempted the same thing.

Mr. Barshay: Respectfully except, sir.

Now I urge upon the Court, taking into consideration the reasoning and logic of the Court in excusing a juror by the name of Protter, that to say the least—

The Court: Please! Let us try this case in a dignified manner.

Mr. Barshay: I respectfully except to that.

The Court: If you want to criticize the Judge, go outside of the court-room.

Anything more?

Mr. Barshay: Your Honor declines to let me finish my argument?

The Court: I do.

[fol. 1251] Mr. Barshay: Respectfully except.

The Court: No expressions of displeasure on the Court's ruling are permitted.

Mr. Talley: Defense challenges Mr. Groden peremptorily.

Mr. Rosenthal: With the reservation taken to the Court's overruling of the challenge.

Mr. Barshay: That goes for all defendants.

LEON WALLACH, of 850 Fortieth Street, Brooklyn, New York, was examined as to his qualifications.

By Mr. Turkus:

Q. Mr. Wallach, the trestle board lists your address as 850 Fortieth Street. Is that Bay Ridge or Borough Park?

A. Well, it is outside of Borough Park. I don't know the exact name of the section. It is adjacent to Borough Park.

Q. Would that be around 9th Avenue and 40th Street?

A. That is right.

Q. Have you lived in Brooklyn a number of years?

A. I was born in Brooklyn.

Q. And have you lived in that particular section for some time?

A. Three years.

Q. Prior to that where did you live, Mr. Wallach?

A. 45th Street, in Bay Ridge.

Q. You are listed on this trestle board as a department head, without any other explanation. What kind of vocation [fol. 1252] is that sir?

A. Well, it is charge of distribution, examining, ticketing of the sportswear department, ladies' sportswear department.

Q. You are in the ladies' sportswear business; is that correct?

A. Yes.

Q. And you are in charge of distributing, ticketing, and of routing of the sportswear on the way to the customer?

A. To the various stores.

Q. So you are in the wholesale or manufacturing branch of the business?

A. No, I would say the jobber.

Q. Where is your place of business?

A. 360 West 31st Street.

Q. That is in the so-called garment or clothing district of Manhattan?

A. That is right.

Q. And how many years have you been in that business, ladies' sportswear?

A. Since 1929.

Q. Ladies' sportswear, would that include ladies' apparel; is that what it is?

A. That is right.

Q. And it has a specific designation.

A. Would include ladies' blouses, skirts, jackets, play suits, slack suits, ski pants, and snow suits.

Q. You are in contact with various people in the garment and clothing districts and have been since 1929?

A. And previous to that.

Q. Are the names of Lepke and Gurrah familiar because [fol. 1253] of your experience in business in the garment district?

Mr. Climenko: I object to the form of the question.

The Court: Overruled.

Mr. Climenko: Exception.

A. Yes.

Q. I believe you said yes.

A. Yes.

Q. I take it that you read considerable of the investigations conducted by District Attorney Dewey?

Mr. Rosenthal: I object to the form of the question as being leading and suggestive, putting the words in the salesman's mouth.

Mr. Turkus: This is a matter of saving time.

Mr. Rosenthal: When we try to save time—

Mr. Turkus: Judge, may I have a right to address the Court without the heckling?

The Court: The objection is sustained on the ground it is leading.

Q. Did you, sir, read of the investigation of Thomas E. Dewey?

A. Yes.

Q. In your experience in the clothing district did you become familiar with the names of various officials in the Amalgamated Clothing Workers of America Union?

A. In an abstract sort of a way.

Q. Did you hear the name mentioned and did you become familiar with the name of Hymie (Curley) Holtz?

[fol. 1254] A. No, I don't think I did.

Q. Did you hear the name of Philip Orlofsky in that district?

A. I may have heard that name.

Q. The names of Weinstein and Katz?

A. I think I have heard of Weinstein.

Q. The names of Bruno Belia?

A. I think I have heard that name mentioned.

Q. And Bellanca and Tosca?

A. No.

Q. Did you have discussions about various factors of the Dewey investigation with people in that district?

A. Yes, nothing definite, nothing definite that I can remember. I remember discussing it.

Q. Have you had any talks or did you listen to any discussions about the O'Dwyer investigations?

A. Yes, with business associates.

Q. Let me ask you this very frankly—

Mr. Cuff: May we have the answer?

(Answer read.)

Q. Mr. Wallach, very frankly, have you an opinion in regard to this case?

A. In regard to this case, no.

Q. Have you an opinion with respect to the defendants?

A. Yes.

Q. Is that an opinion which runs to guilt or innocence?

The Court: On this charge; guilt or innocence on this charge.

[fol. 1255] The Talesman: Not on this charge.

Q. Is the name of Abe or Abraham Beckerman a familiar name to you?

A. No.

Q. Do you know any officials of Local 240 of the Clothing Drivers & Helpers Union?

A. None that I can think of.

Q. Is the name of Sam (Sneaky) Levine, familiar, Samuel Levine, frequently called Sneaky?

A. Not that I remember.

Q. Do you in your every-day business have contact with clothing truckers?

A. I used to.

Q. How many years ago was that?

A. I would say three years, three or four years.

Q. Have you a financial interest in the concern or are you an employee?

A. Employee.

Q. Would you have any embarrassment in serving on a jury in this case which would be to the detriment of The People of the State of New York?

A. I do not understand that question.

Q. Because of your affiliations and your work in this garment or clothing district, would there be any embarrassment on your part to take your place in the jury box which would affect the welfare and the interests of The People of the State of New York?

Mr. Rosenthal: I object to the question.

The Court: Sustained. Without stating which side, he can state whether or not it would cause any embarrassment.

Q. Will you be caused any embarrassment by jury service [fol. 1256] in this case?

A. There is a possibility. It is hard to make a definite answer to that. I do not know.

Q. What I am trying to find out is this, Mr. Wallach: Is there anything because of your connections in this area and in this particular industry which would preclude you from being a juror in the case?

Mr. Climenko: I object to the form of that.

The Court: Sustained as to form.

Would that embarrassment affect your verdict?

Mr. Rosenthal: I object to the question upon the ground the juror said there is only the possibility that he might have. He has not stated he has any embarrassment.

The Court: You are right. Withdrawn.

Is that possibility of an embarrassment one which, if actual, would affect your verdict?

Mr. Climenko: I object to that question, if your Honor please, upon the ground that it is speculative.

The Court: Overruled.

Mr. Climenko: Exception.

A. I cannot give a definite answer to that question.

By the Court:

Q. You cannot answer that?

A. I would not know.

Q. Is there any reason why you cannot render a fair and impartial verdict, based upon the evidence and regardless of your position in the garment trade?

[fol. 1257] A. I would answer that by saying I think so. It is not definite.

The Court: You think so.

By Mr. Turkus:

Q. Do I understand the import of the answer to mean that you think you cannot?

A. That is right.

Mr. Turkus: I am going to challenge on the ground of implied bias.

The Court: Try the challenge.

LEON WALLACH, of 850 40th Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Turkus:

Q. Mr. Wallach, heretofore, before you were sworn on this void dire, you were asked certain questions by the counsel for The People of the State and by the Court and you made responses to those questions. Do you recall making such responses?

A. Before I was called?

Q. Before you actually raised your hand and were sworn, both the District Attorney and the Court asked you questions and you made answers. Do you remember that?

A. That is right.

Q. If those questions were repeated to you now, would you make the same answers?

A. That is right.

Q. And would those responses be true?

A. That is right.

Q. Substantially, you have been in the clothing business, in ladies' sportwear and allied work, for the past eleven or twelve years; is that correct?

[fol. 1258] A. Also with the coat business within the eleven or twelve years.

Q. The manufacture of coats and clothing?

A. Yes.

Q. So that for many years past you have been in intimate contact with the garment and clothing industry; is that correct?

A. Yes.

Q. The name of Lepke and Gurrah are familiar names to you?

A. That is right.

Q. Certain of the other names I mentioned were likewise familiar, as you had heretofore answered; is that correct?

A. That is right.

Q. And in response to a question as to whether or not you had an opinion in the matter, you said you had one with respect to the defendants. What was the word you used with respect to describing that opinion?

A. Was it detrimental?

Q. And then when you were asked by the Court whether or not you could be a juror deciding the case on the evidence, you indicated, did you not, by your answer, that you had doubt that you could be such a juror?

A. That is right.

Q. And that is your frame of mind now?

A. That is right.

Mr. Turkus: Press the challenge.

By Mr. Barshay:

Q. Mr. Wallach, you have heard other jurors being questioned both by the prosecutor and counsel for the defense and sometimes by the Court. Now, can you lay aside any opinion or impression that you have or had and

[fol. 1259] render a fair and impartial verdict based upon the evidence in this case?

A. I would be willing to; however, I cannot say that I would be able to. These impressions are gathered over a number of years.

Q. Would you mind keeping your voice up?

A. These impressions are gathered over a number of years, have been pretty deep.

Q. You said they have nothing to do with this case.

A. However, I cannot say for sure that I will be able to put them aside entirely. I will be willing to try.

Q. Let us get this: You said they had nothing to do with this case at all. Didn't you say that?

A. I said they had nothing to do with the decision of this case.

Q. That is right. In other words—

Mr. Turkus: I object to the form of the question, "That is right."

The Court: Overruled.

Q. You said it will have nothing to do with the decision in this case. Is that so, sir?

A. I don't remember the way the question was put that I answered that way.

Q. Put it any way at all. The point is that you told the District Attorney that with respect to this case you had no opinion whatever concerning the guilt or innocence of the defendant. Did you say that?

A. I think I did.

Q. You did, did you not?

A. I remember I did.

Q. That is true, isn't it; you have no opinion now with [fol. 1260] respect to the guilt or innocence of the defendants in this case?

A. That is right.

Q. Any other impression you may have gathered has nothing to do with this case. That is what you said?

A. It has nothing to do with this case, but it may render me biased.

Q. It may make you biased in this case?

A. I don't know; that is something I do not know.

Q. Isn't it a fact that you are able to lay aside any impressions that you may have gained with respect to any

defendant and render a fair and impartial trial in this case, based upon the evidence?

A. Something I cannot answer. I don't know.

Q. You don't know?

A. I would be willing to try to render a fair——

Q. Will you make every effort to lay aside any impressions you have?

A. I would make every effort.

Q. And render a fair and impartial verdict, based upon the evidence?

A. That is right.

Mr. Barshay: No further questions.

The Court: Counsel for defendant Weiss?

Mr. Talley: No further questions.

The Court: Counsel for defendant Capone?

Mr. Rosenthal: No questions on this challenge.

The Court: The talesman has stated that his impression is detrimental to the defense. He has not gone so far as to state that it would prejudice his decision. Do counsel [fol. 1261] for the defense still oppose the challenge?

Mr. Talley: I oppose the challenge; yes, sir.

The Court: Overruled.

Mr. Barshay: On behalf of Buchalter, we did not oppose any challenge. We asked the Court to try the challenge without stating our position. Your Honor has refused to permit us to consent to challenges.

Mr. Rosenthal: That goes for the defendant Capone.

The Court: Are you scoffing at the Court? The Court will ask you to please assume an attitude of dignity and respect in your dealings with the Court. The Court is trying to be fair and impartial and show respect for the position of counsel.

Mr. Rosenthal: May I address the Court?

The answer of Judge Talley applies to his client

The Court: The Court has ruled.

Mr. Barshay: We except, sir.

By Mr. Turkus:

Q. All right, Mr. Wallach, let me just ask you a few more questions along this line, and then we will go right ahead. In the event that The People of the State of New York satisfy you that these three men at the bar, Capone, Weiss,

and Buchalter, are guilty of murder in the first degree, the murder of Rosen, would you have any fear in saying so?

A. No.

Q. Would you have any hesitation or reluctance in saying so?

[fol. 1262] A. No.

Q. Would your embarrassment be such as to preclude you from bringing in a guilty verdict if the evidence satisfies you that they are guilty of murder?

A. No.

Q. Do you have any contacts in Brownsville or East New York?

A. No.

Q. Can I go ahead now that every answer you have made is an honest, frank answer?

A. That is right.

Q. As you sit there you are telling me the Gospel truth, when you are making these responses?

A. That is right.

Q. I take it I can go along with the understanding that you have no scruple, conscientious or otherwise, against capital punishment?

A. That is right.

Q. That in so far as you are concerned, the question of punishment will not enter into your deliberations in ascertaining the guilt or innocence? The question of punishment will not enter your deliberations?

A. That is right.

Q. Do you understand me?

A. Yes.

Q. Have you in the past had any connections with anybody in the Brownsville-East New York area of Brooklyn?

A. No. I have some relatives living there which I infrequently visit.

Q. In that position that you occupy do you have anything to do with trucking of merchandise?

A. I did one time.

Q. I mean presently.

A. At present, no.

Q. Presently what are your duties?

[fol. 1263] A. Well, as I stated, it is department head.

Mr. Cuff: Judge, I object to this. I do not think we are interested in his duties, any business of his.

The Court: Overruled.

Mr. Cuff: Exception.

A. Well, in the sportswear department my primary duties is to plan sales and shipments to the various stores of the chain, and then take charge of receiving, examining, checking, and the distribution of goods.

Q. Does your business—

Mr. Rosenthal: It is impossible to hear back here. This is even worse than the other court-room. Judge, may I have the answer repeated.

The Court: Yes. Try to speak a little louder.

(Answer read.)

Q. Do your present duties bring you into contact with any union officials in the trucking end of the business?

A. No.

Q. Going back to the Brownsville-East New York section, I think you said you had some relatives that live in that area.

A. That is right.

Q. Have you visited there frequently?

A. No, very seldom.

Q. Are those the only contacts you have in that district, in Brownsville-East New York?

A. That is right.

Q. Do you have anything there so far as contacts on the Brooklyn waterfront?

A. No.

[fol. 1264] Q. Have you ever had any by way of business?

A. No.

Q. Since you received your jury notice, Mr. Wallach, did anybody speak to you about the case?

A. Yes.

Q. Who was that?

A. Friends and family.

Q. When you say "friends," do you mean people in the garment district?

A. In the garment district.

Q. In their discussions did they mention the name of any defendant to you?

A. Yes.

Q. More than one?

A. Yes.

Q. Were those talks expressions of opinion?

A. Yes.

Q. Did you hear expressions of opinion passed by friends of yours in the garment district with respect to one or more of the defendants?

A. Yes.

Q. Did you express any opinion?

A. No.

Q. Had you ever discussed any business in the garment district with these friends before?

A. What do you mean by "business"?

Q. What I am trying to find out is this: You say after you received your notice some friends spoke to you about one or more of these defendants.

A. That is right.

Q. And that there was an expression of opinion passed.

A. That is right.

Q. That it was not by you, but it was by the friends. Was that after your notice had been received?

A. That is right.

Q. Was it after your name had appeared in the newspaper?

[fol. 1265] A. I am not aware that my name did appear in the newspapers.

Q. Did these people know you had this notice?

Mr. Rosenthal: That is objected to.

The Court: Sustained.

Q. Did you tell them you had a notice in this case?

A. Well, through associates with whom I worked they found out when I had to report why I was absent.

Q. Did any of these people urge an opinion upon you?

A. That is not clear.

Q. Did they urge their opinion upon you? Did they try to win you over to their way of thinking?

A. No, they expressed an opinion.

Q. The expressions that you had from members of the family, was that with respect to the length of service, or was that in regard to some defendant?

A. That was more general, about the entire jury service.

Mr. Cuff: Won't you please speak up?

The Talesman: That was in regard to serving on the jury, rather than in relation to defendants, in relation to family talks.

Q. These friends that expressed an opinion, was that an opinion as to the guilt or innocence of these defendants on this charge?

A. In some cases, yes.

Q. Was that an opinion that stays with you?

A. Not from what they told me.

[fol. 1266] By The Court:

Q. Has it influenced you?

A. No.

By Mr. Turkus:

Q. Are you in sympathy, sir, with the enforcement of the Penal Law of the State of New York?

A. That is right.

Q. There are nine lawyers in this case representing these defendants at the bar. I have repeated the names and their former connections. Do you know any of them?

A. I have heard of them, but some of them—I do not know any of them.

Q. When you say you have heard of them, has that been by way of newspaper reading and discussions with people?

A. Newspaper reading and discussions.

Q. Has any specific lawyer's name been mentioned to you since you received your jury notice?

A. A number of names have been mentioned to me, since I received my jury notice.

Q. Who made the mention?

A. Acquaintances, friends of mine, a few of them in the legal profession.

Q. Do you know intimately any member of the bar who specializes in the trial of criminal cases?

A. Not the criminal cases.

Q. Did any of the discussions that you had with friends and acquaintances with respect to any member of the bar in this case leave any lasting impression with you?

A. No.

Q. Do you know District Attorney O'Dwyer of the county personally?

A. No.

[fol. 1267] Q. Do you know Assistant District Attorneys Klein, Joseph, or Turkus?

A. No.

Q. Do you know any member of the District Attorney's staff who is an Assistant District Attorney?

A. No.

Q. Does your business bring you into contact with any officials of the Amalgamated Clothing Workers of America?

A. Officials?

Q. Yes.

A. Not that I can think of.

Q. Business agent?

A. No.

Q. Or any kind of business representatives?

A. No.

Q. Do you have any contact with them at all?

A. No.

Q. Is the name of William or Willie Alberts, a one-time bondsman, at all familiar to you?

A. No.

Q. Or that of Emanuel Buchalter?

A. No.

Q. Phillie Kowas?

A. No.

Q. Do you know any family by the name of Weiss in the automobile rental business?

A. No.

Q. Or Chevrolet sales?

A. No.

Q. Is the name of Terry Burns and the name of Abie Slabo familiar names to you?

A. No.

Q. Do you have any bias against the prosecution wherein the use of accomplice testimony is employed?

A. No.

Q. Do you understand what is meant by the word "accomplice"?

A. Yes.

Q. Is your state of mind such that an accomplice is one [fol. 1268] who states he was a participant in the crime with others, that he himself along with others participated in the commission of the crime? Do you understand that to be substantially the definition of an accomplice?

A. That is right.

Q. Do you find any fault with the prosecution of an indictment whereby the testimony of such an individual, an accomplice, is used against the remaining defendants on trial?

A. No.

Q. Have you heretofore served as a juror in any type of case?

A. Never.

Q. This will be your initial experience, then?

A. That is right.

Q. Will you take the law exclusively from Judge Taylor?

A. That is right.

Q. Now, with regard to an accomplice, will you look at all the things that are detrimental to the accomplice in weighing his testimony? For example, will you look at his past record in crime, will you see with whom he associated and every immoral and vicious and criminal act that he ever did in his lifetime—will you look those things over in weighing his testimony?

A. That is right.

Q. By the same token, will you use common sense and understanding in weighing the issue in this case, the guilt or innocence of these defendants on this murder charge?

A. Yes.

Q. I take it you appreciate that there will be certain individuals come into this court-room, types of persons that [fol. 1269] you have not met in your ordinary daily life and business experience, and if you meet that kind of an individual in this court-room will you use common sense and understanding in weighing the issue of this case, the guilt or innocence of these defendants on this murder charge?

A. I will.

Q. With respect to an accomplice, may I go along with the understanding that you will accept the testimony of such an individual with care and caution?

A. I will.

Q. And that you will use every detrimental thing against him in weighing his testimony, you will consider it in weighing it?

A. Right.

Q. May I go along too with the understanding that solely because a man is an accomplice, you would not close your ears to his testimony?

A. That is right.

Q. Should the Court charge you that no prosecutor can get a conviction upon the unsupported testimony of an accomplice, would you follow that instruction of law?

Mr. Cuff: Object to the question, if your Honor pleases, improper statement of law.

By the Court:

Q. If the Court should charge you that an accomplice must be corroborated by evidence tending to connect the defendants with the commission of the crime, will you be guided by that charge and follow it?

A. I will.

By Mr. Turkus:

[fol. 1270] Q. And will you, with respect to the charge of tending to connect the defendants with the commission of the crime, use common sense and understanding in applying that definition to the facts of this case?

A. I will.

Q. If the Court should charge you that the prosecutor does not have to corroborate each and every meticulous detail of the case, but that the jury may find corroboration if there is evidence which tends to connect the defendants with the commission of the crime or the commission of the crime, will you follow that rule of law?

A. I will.

Q. It has been said here by one of the lawyers who represent the defendant Buchalter that his client has been heretofore convicted of crime and sentenced to jail. Would the fact that one of the defendants is now serving a term in a jail, would that cause you to relax or deviate from a proper verdict as a juror in this case?

Mr. Climenko: I object to the form of the question, if your Honor pleases.

The Court: Overruled.

Mr. Climenko: Exception.

By the Court:

Q. Would that have any bearing on your verdict?

A. It might.

Q. Supposing the Court charges you that it has no bearing on this indictment.

A. Yes, I think I would be able to.

[fol. 1271] Q. Would you follow the ruling of the Court?

Q. Yes, I would.

By Mr. Turkus:

Q. Will you find out from the evidence in this case, if selected as a juror, whether that defendant who has been heretofore convicted of crime is guilty of this murder charge, the Rosen murder?

A. I will try to.

Q. You say, Mr. Wallach, you used an expression you will try. Can you do so? Is your mental state of mind such that if you are satisfied he is guilty you will say so?

A. I am trying to give the answers as I best am able to reason them out.

Q. Is there something in the back of your mind that would prevent you from voting guilty, even if you find the evidence to warrant a conviction?

A. Will you repeat that?

Q. Is there something in the back of your mind, have you some mental reservation, that even though you were convinced the defendants were guilty of murder in the first degree, that you might not vote guilty?

A. If I was convinced, I would vote.

Q. Well, is it when you say that you will try that you bear in mind that you have certain impressions that you have gained since you have been in the garment district? Is that what you have in mind?

A. That is right.

Q. If selected as a juror in the case, will you listen to reasonable discussion by the other jurors?

A. Yes.

[fol. 1272] Q. And, going back to that question that we discussed before I went into that point, will you if you are satisfied that these defendants are guilty of murder in the first degree be able to render your verdict without considering the fact that one of them is in jail?

Mr. Talley: It has already been answered. It is objected to on that ground.

The Court: Sustained.

Q. If selected as a juror in this case, will you endeavor by your verdict to do justice in the case?

A. I will try.

Q. Mr. Wallach, I do not understand exactly what you mean by you will try. Will you by your verdict do justice in the case?

The Court: How can he say anything better than he will try?

The Talesman: I will try

Mr. Turkus: All right. I think I would have said something more definite, but I will go right along.

Q. In the event that after you have heard all the evidence you are satisfied from the evidence beyond reasonable doubt that the accomplice who testifies tells the truth about these defendants and that there is other evidence in the case which tends to connect each of these defendants with the commission of the murder, would you have the slightest hesitation, fear, reluctance, or embarrassment in so saying in your verdict?

Mr. Cuff: I object to that as already answered earlier in the examination of the talesman.

The Court: Sustained.

[fol. 1273] Mr. Turkus: I did not ask that question in that form.

The Court: I sustain it because it omits two important things.

Q. Mr. Wallach, assuming that you have heard all the evidence in the case and you are satisfied beyond reasonable doubt that the accomplice is not only telling the truth about the participation of these defendants in the commission of the murder, but from the other independent evidence in the case you are satisfied beyond reasonable doubt that there is other evidence which tends to connect these defendants with the commission of the crime, and you feel that they are guilty of murder in the first degree, would you hesitate, would you be fearful, would you be embarrassed to say so in your verdict?

Mr. Cuff: I object to the question as already asked and answered. That question was asked before the challenge was tried.

Mr. Turkus: Not in that form.

Mr. Cuff: I do not care what form. He was asked that question substantially.

Mr. Turkus: Your Honor, I am addressing the Court. I have not pressed that question in that form with respect to accomplice and corroboration.

The Court: The question is improper because it asks him concerning his feelings. Not concerning the talesman's feelings, concerning guilt or innocence.

[fol. 1274] Mr. Turkus: As to his state of mind.

The Court: As to what he finds from the evidence.

Mr. Turkus: I am asking him as to his state of mind, if he is satisfied in substance that the defendants are guilty would he be fearful?

Mr. Cuff: That is objected to.

Mr. Turkus: That is a state of mind that the prosecutor is entitled to know from a man in that district.

Mr. Climenko: Objection.

The Court: The Court will reframe it.

By the Court:

Q. If upon all of the evidence in the case and following the Judge's charge you were convinced of the defendants' guilt or of the guilt of any defendant, will you say so by your verdict?

A. I will.

By Mr. Barshay:

Q. Mr. Wallach, are you related to the Wallach brothers, who are lawyers in Brooklyn?

A. No.

Q. In no way whatever? Do you know them?

A. I have heard of them.

Q. But you never spoke to them? Now, Mr. Wallach, are you a gentleman who applied for an excuse; is that right?

A. That is right.

Q. And has the reason which prompted you to apply for an excuse now been dissipated?

A. No.

[fol. 1275] Q. And will the Court's discretion in not excusing you prejudice the defendants in any way?

A. No.

Q. You understand that was solely and only for the Court and has nothing to do with us?

A. Yes.

Q. Do you know anyone at all in the Police Department?

A. Yes.

Q. May I know whom you know?

A. There is Sergeant Moran, 66th Precinct.

Q. Did you ever discuss the case with him, this case?

A. No.

Q. Anyone else?

A. Captain Upham, of the 66th Precinct.

Q. Did you ever discuss the case with him?

A. No.

Q. Your knowledge of these officers will not influence you in any way, will it, in this case?

A. Not with these officers, no.

Q. Have you personally ever been the victim of any crime?

A. No.

Q. Has any member of your family been the victim of any crime?

A. Yes.

Q. Close to you, very close to you?

A. There was a burglary committed in my sister's home.

Q. But that will not prejudice you in this case against any of the defendants, will it?

A. No.

Q. May I know for whom you work?

A. Henry Rese Stores.

Q. Is that a chain shop?

A. It is a subsidiary organization of the Sears-Roebuck Company. They merchandise all the softer lines for the [fol. 1276] Sears-Roebuck chain of stores.

Q. How long have you worked there?

A. Since 1929.

Q. Amongst the list of names read to you was there any name there at all whom you knew personally?

A. No.

Q. Do you know Mr. Louis Waldman?

A. I seem to recollect hearing about him but I do not know him.

Q. In any event, your knowledge of him has nothing to do with this case?

A. No.

Q. Or Mr. Potofsky?

A. Nothing definite. I do not know the man. I have heard of him.

Q. Do you know Mr. Maguire of Rice & Maguire?

A. No.

Q. Do you know Mr. Ryan, the head of the Longshoremen's Union?

A. No.

Q. Mr. Turkus read to you a great list of names——

Mr. Turkus: I did not read any names at all. I object to the form of the question. I let that go by a number of times, but I do not want it to appear that the prosecutor got up and read any list of names. There was no reading of names.

The Court: This gentleman was in the box and heard the list read.

[fol. 1277] Mr. Turkus: There was no list, your Honor, that I ever consciously read. I asked as to certain names, but there was not a reading of any list.

The Court: I misconstrued it. Leave out the question of list.

Q. Mr. Turkus said he did not consciously read any list of names. Well, consciously or otherwise, you heard a lot of names come forth from his lips, isn't that so?

A. That is right.

Q. All through the time you were sitting here?

A. That is right.

Q. If they have nothing to do with this case, will you discard any innuendo that may be drawn from the mere mentioning of their names?

Mr. Turkus: I object to the form of the question.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. Will you disregard even the names themselves or any reference to them unless they have something to do with the evidence in this case?

Mr. Turkus: I object to it. The names that are discussed on the voir dire have nothing to do with the case.

The Court: They are entitled to know if the asking of those names——

[fol. 1278] Mr. Turkus: Would leave any impression.

The Court: —has prejudiced the talesman.

Mr. Turkus: As to that I find no fault.

A. No.

Q. Your answer is what?

A. No.

Q. In other words, you will strip this case of all atmosphere, won't you, and get right down to the evidence in this case and nothing else?

Mr. Turkus: I object to the form of that, carrying with it an implication and innuendo.

The Court: Overruled. Leave out "innuendo".

A. I will try to.

Q. You will do your best. That is fair, isn't it? Now, some gentlemen spoke to you about this case, you said, and some have even expressed an opinion; is that so?

A. That is right.

Q. You tell me now, did you respect the opinion of those gentlemen who spoke to you prior to their speaking to you about this case, on any subject that they spoke of?

A. Yes.

Q. In other words, you felt them competent, before them speaking to you about this case, with respect to their judgment on other matters?

A. That is right.

Q. Have you disagreed with them on other occasions?

A. Well, there has been a difference of opinion at times.

Q. Sometimes you felt you were just as right as they; is that so?

A. That is right.

[fol. 1279] Q. With respect to this case, did you accept their opinion or did you differ with them?

A. Well, I listened to their expressions. I did not try to analyze it or make up any opinion.

Q. Well, did you come to the same conclusion as they?

A. Well, they may have left impressions or deepened impressions I have had, but I did not try to come to any conclusions.

Q. In other words, you are not even sure whether they left an impression, are you?

A. No, I could not be sure whether they left an impression. It is very vague. I mean workings of my mind, sometimes very vague. I just can't analyze them. I know there have been impressions.

Q. At any rate, you know that they did not hear sworn testimony when they expressed their opinion?

A. That is right.

Q. And so now if you are chosen as a juror, you will be in a much better position because you shall hear the sworn testimony?

A. That is right.

Q. Can you tell me fairly, no matter what impression they left, if they left any, you will subordinate, you will eliminate it and be guided only by the impressions you get as you search for the truth on the witness stand?

A. I will be willing to try.

Q. You will do your best?

A. I cannot tell what weight impressions may have on my mind. I know they are there. I know those impressions are there. I shall be willing to try to put them aside, but I cannot tell how much weight they will bear.

[fol. 1280] Q. Will it require any evidence to be furnished on behalf of the defendants to dissipate that impression that may be lurking there?

A. Possibly.

Q. And if the Court shall tell you that as a juror you must take the law from the Court and that if the defendant makes no explanation or does not take the stand you cannot draw an unfavorable inference against him, will you follow that law?

A. I will try to follow it.

Q. Will you then dissipate that impression?

A. That is something I cannot answer.

Q. Well, if the Court tells you that as a juror you must, and you undertake your burden if you are chosen as a juror, and you are sworn as a juror, will you do it then?

A. I will try to; I will do my best.

Q. Mr. Wallach, no one is better fitted to tell us your state of mind than yourself. You understand that. We want an absolutely fair juror to both sides. You understand that. That requires a good deal of effort on the part of the juror. You have kept on saying all this time that you will try. In other words, is there a mental reservation in your mind as to your ability to succeed in that effort to dissipate prejudice or impression or whatever you may call it, against the defendant?

A. I think that is the state of my mind right now.

Mr. Parshay: I challenge him for cause.

The Court: Try the challenge.

[fol. 1281] LEON WALLACH, a talesman, was again sworn and testified as follows:

By Mr. Barshay:

Q. Now, under oath, would you make the same answer to the question if I repeated it to you?

A. I would.

The Court: We have lost substantial time because the questions were inadequately pressed when the same challenge was raised before by the District Attorney. The blame for that is entirely with the defense. The challenge was sustained.

Mr. Barshay: We respectfully except to your Honor's comment.

The Court: Exception won't get you anywhere. I am just telling you that I have been indulging you. Hereafter you have to work and make up the time you lose in this manner.

Mr. Barshay: I submit, sir, the District Attorney should challenge him for cause to him and not for us.

Mr. Turkus: Your Honor, may the rest of the jury be told to disregard what Mr. Barshay's concept of the District Attorney's duty is?

The Court: Yes.

Mr. Turkus: I thought he was unfavorable to the defense.

The Court: Please stop.

[fol. 1282] Mr. Barshay: That is exactly what we want to avoid.

The Court: When a challenge is tried upon a specific ground, the Court requires that all counsel thoroughly try the challenge. This is the last time that a repetitious challenge will be tried. Next gentleman.

PAUL S. BATTERSON, of 250 Ocean Parkway, Brooklyn, New York, was examined as to his qualifications.

By the Court:

Q. Are you Lincoln Batterson's son?

A. No, sir.

By Mr. Turkus:

Q. Mr. Batterson, do you live at 250 Ocean Parkway?

A. Yes, sir.

Q. And is that near Church Avenue?

A. That is.

By the Court:

Q. The Lincoln Batterson I had in mind years ago was a photographer. Are you in his family?

A. No, I never heard of him.

The Court: All right.

By Mr. Turkus:

Q. Have you lived in Brooklyn some time?

A. Yes, sir.

Q. More than five years?

A. Yes, sir.

Q. And have you lived in this particular section? Is that called part of Flatbush?

A. Yes, it is.

Q. And have you lived in that area for a number of years?

A. I lived in there almost five years.

[fol. 1283] Q. The trestle board lists your vocation as that of a bank clerk; is that correct?

A. That is right.

Q. And by what bank are you employed?

A. I am with the Serial Federal Savings & Loan Association.

Q. Where is that, in Manhattan?

A. Yes, sir.

Q. In the financial district?

A. It is in the financial district.

Q. Have you been employed by this bank for a number of years?

A. Five years.

Q. Have you any connection by way of business or any other contact with anybody in the garment industry or in the clothing industry?

A. No, I have not.

Q. Or do you deal with any people employed in their districts in which clothes are commonly manufactured and distributed?

A. No, sir.

Q. Do you have any connection, either in the past or presently, with any firms or individuals in the Brownsville-East New York section of Brooklyn?

A. Never.

Q. Does that hold true with respect to the Brooklyn waterfront?

A. That does.

Q. And may I proceed, then, that it holds true with the clothing trucking industry?

A. It does.

Q. From time to time——

By the Court:

Q. Will you kindly tell us what your duties are in the [fol. 1284] bank and how long you have been employed?

A. I have been employed at this savings and loan association for five years. It is a small association, and I do practically everything, from teller to bookkeeping.

Q. Where is that located?

A. It is located at Vesey and Church Street. I prepare their advertising program, write copy.

Q. Is that at 30 Church Street?

A. 30 Vesey Street.

Q. 30 Church Street is the Terminal?

A. The Terminal, I believe, is 50 Church. That is near by.

Q. You are at the southwest corner, southeast corner?

A. No, the southeast corner is the churchyard. I am right across the street from there. I am at the northeast corner.

Q. What is the name of that concern?

A. Serial Federal Savings & Loan Association.

Q. How do you spell it?

A. S-e-r-i-a-l.

Q. Is that a New York State corporation?

A. No, it is under Federal charter.

By Mr. Turkus:

Q. That is a company, isn't it, that lends out money on mortgage and it is guaranteed by an agency of the United States Government?

A. That is right, sir.

Q. In other words, if you have an investment there it is guaranteed up to five thousand, the same as a savings account?

A. It is.

By the Court:

[fol. 1285] Q. For which you pay half of one per cent?

A. That is right.

By Mr. Turkus:

Q. Did you ever have any contact with any person living in 30 Ocean Parkway, Brooklyn?

A. No, sir.

Q. Are you in sympathy, sir, with the enforcement of the Penal Law of the State of New York?

A. I am.

Q. Since you received your jury notice did anybody speak to you about this case, that is, about the merits of the case?

A. Not about the merits.

Q. Then I take it if you had any discussion it was limited to prospective service on the jury?

A. That is about all.

Q. I have mentioned the names and the former positions held by the nine defense lawyers in the case. Do you know any of them or anyone connected in their law offices?

A. No, I do not.

Q. Do you know the District Attorney of the county, Judge O'Dwyer, personally?

A. No, sir.

Q. Specifically, do you know Assistant District Attorney Joseph, Klein, or Turkus?

A. No, sir.

Q. Do you know any Assistant District Attorney on the staff of Judge O'Dwyer?

A. I do not.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. No, I do not.

Q. Have you heretofore served as a jurymen in any type of litigation?

A. Yes, I have.

[fol. 1286] Q. Has it been a criminal case?

A. No, sir.

Q. A civil case?

A. Yes, sir.

Q. Did that case go to a conclusion, and by that I mean did the jury have the law changed by the Court?

A. Yes, it did.

Q. With respect to this case, this a criminal case, and the law is different than it is in a civil case. I am not going to go into any discussion of the law, because that is not my province, that is the province of the Court. Will you take the law exclusively from Judge Taylor in its every aspect?

A. Yes, I will.

Q. With respect to the prosecution, do you find any bias or prejudice against the prosecution wherein the District Attorney, in order to solve the case, accepts the testimony of an accomplice? Have you any bias or prejudice against that type of testimony?

A. No, I have not.

By the Court:

Q. Do you mind telling us your educational qualifications?

A. I am a graduate of Prehn(?) College in Chicago, and I had a year and a half at New York University School of Account.

Q. You got your Bachelor's degree at Prehn College?

A. It is only a two-year college, but I got my Associate Bachelor's degree, as they call it.

Q. And you got your C. P. A.?

A. No, sir. I have studied bookkeeping and accounting, but I never received the C. P. A.

Q. That Prehn College is not a correspondence school?

[fol. 1287] A. No, sir, Prehn College corresponds with C. C. N. Y. It is a City-controlled college.

Q. You lived in Chicago at that time?

A. Yes, sir.

Q. And you have been here how long?

A. I have been here since—I have been here twelve years.

Q. And how old are you?

A. Thirty-four.

By Mr. Turkus:

Q. Northwestern is a Chicago university, isn't it?

A. Northwestern is located in Evanston, Illinois, which is a suburb.

By the Court:

Q. Do you belong to the Bankers Club at 120 Broadway?

A. No, sir, I do not.

By Mr. Turkus:

Q. I think I got to the point with you, Mr. Batterson, where you said you had no bias or prejudice against the prosecution wherein the testimony of a co-participant in a crime is used against remaining defendants.

A. I have no prejudice.

Q. Of course, will you when you are weighing the testimony of an accomplice in the case, will you look at every rotten thing in his background, every crime he has committed, every vicious and immoral act he has committed, and everything that there is that can be applied to his detriment? Will you do that?

A. I will.

Q. And will you look at the testimony of an accomplice [fol. 1288] with care and with caution?

A. Yes.

Q. May I go along with the understanding that you won't shut your ears to testimony solely because it emanates from an accomplice?

A. No, I won't shut my ears.

Q. It is going to be your job to find out is the accomplice telling the truth about these defendants; right?

A. That is right.

Q. Will you, in weighing the issue of guilt or innocence of these defendants at the bar and in passing judgment on the case, use common sense and understanding in working out that issue?

A. Yes, I will.

Q. And will you listen to common sense discussion and reasonable argument by the other jurors?

A. I will.

Q. Should the Judge charge you that there cannot be a conviction upon the unsupported and uncorroborated testimony of an accomplice, would you follow that law?

A. Yes.

Q. And should the Judge charge you that corroborating or supporting evidence may be found to be sufficient by the jury if believed by the jury when that evidence tends to connect the defendants with the commission of the crime, will you follow that instruction?

A. I will.

Q. If selected as a juror in the case will you endeavor by your verdict to render justice in the case?

A. Yes.

Q. Will you take the law in its every aspect from Judge Taylor?

A. I will.

[fol. 1289] Q. In the event and if you should hear the same argument by defense lawyers repeated three times, that somebody is an accomplice or somebody is not an accomplice, or whatever the argument may be, will you give it three times the weight because you hear it three times?

A. No, sir.

Q. It has been brought out by one of the lawyers for Buchalter that he has been heretofore convicted of crime. Would you relax or deviate from a proper verdict in this murder charge because of prior conviction and sentence?

A. I would not relax.

Q. If selected as a juror in this case, will you listen attentively to the evidence after you have heard it all, discuss the case reasonably and sensibly with your fellow jurors who are selected along with you?

A. Yes.

Q. Should The People of the State of New York satisfy your mind beyond a reasonable doubt that here at this bar of justice there are three guilty men, guilty of murder in the first degree would you hesitate, would you be fearful, would you be reluctant in so saying?

A. No, sir.

By Mr. Barshay:

Q. Mr. Batterson, do you belong to any clubs around the neighborhood where you live?

A. No, I don't.

Q. Any churches or temples?

A. Well, I belong to a church, but I am not very active in it.

Q. Has any Assistant District Attorney ever spoken at [fol. 1290] that church?

A. No.

Q. About crime?

A. Not while I was there.

Q. Did you ever hear a lecture about crime at any place?

A. I don't think so.

Q. Did you ever hear anybody on Judge O'Dwyer's office staff speak?

A. None.

Q. Did you ever hear it on the radio?

A. No.

Q. Are you actively engaged in politics?

A. I am not.

Q. Do you intend to be in this campaign?

A. No, sir.

Q. You never came in contact with any member, clerical or otherwise, of Judge O'Dwyer's office?

A. No, I never did.

Q. Have you read about this case in the press?

A. Well, I read about this case, yes.

Q. Have you read about it often?

A. No, I read about it only once.

Q. Did you believe the contents of the article you read?

A. The contents of the article were simply the nature of the charges and gave no opinion.

Q. So that you gathered no impression from any reading at all?

A. No, all I did was read the nature of the charge.

Q. While you were here listening to prospective jurors being chosen, were you impressed by either side so that you will now favor or are favoring one side or the other?

A. No.

Q. You understand argument between counsel is not personal, it is merely a representation of each opinion?

A. Yes.

[fol. 1291] Q. It has nothing to do with the case. You know that, don't you?

A. I know that.

Q. And at this point, sir, can you tell me, is there any impression in your mind with respect to the guilt or innocence of any of the defendants?

A. No, I have no impressions on this case.

Q. You are free of bias, free of prejudice?

A. Yes, sir.

Q. Free of any impression, and you start off as though you know nothing about it at all; is that correct?

Mr. Turkus: I object to the form of the question. He says he knows nothing.

The Court: Overruled.

Mr. Barshay: That is what I am saying.

A. I know nothing about the case.

Q. The names that were spoken of by Mr. Turkus are unknown to you?

A. Yes, they are all unknown to me. Of course, I have heard one or two of the names in the past, but I have never heard of them through personal contacts with anyone.

Q. And it will not influence you in reaching your verdict?

A. They are merely names to me; they do not make any impression.

Q. Some names I mentioned like Mr. Louis Waldman, Mr. Potofsky, do you know them?

A. No, I do not.

Q. Mr. Maguire, Mr. Ryan?

A. No.

Q. You do not know them?

A. No, I do not.

Q. Have you ever been the victim of any crime?

[fol. 1292] A. I have been the victim of a crime.

Q. Was it a hold-up?

A. Yes, sir.

Q. With a gun?

A. With a gun.

Q. Was it recent?

A. No, it was not. It was about thirteen years ago.

By the Court:

Q. In Chicago?

A. Yes, sir.

By Mr. Barshay:

Q. And because of that are you prejudiced against any person charged with crime?

A. No, I have no prejudice.

Q. You understand that has nothing to do with this case?

A. Yes.

Q. Now, the fact that Mr. Buchalter was mentioned heretofore as under sentence because of a conviction or two convictions totaling forty to seventy years, you say will have no bearing upon this case at all?

A. No, the fact that he is incarcerated has nothing to do with this case as far as I am concerned.

Q. You will never use it except as authorized by law should that time come; is that so?

A. That is so.

Q. No bias against him for that at all?

A. No.

Q. Mr. Turkus has asked you whether you believe in the enforcement of the criminal law, and you said yes. Have you studied law?

A. No, I have not.

Q. Any member in your family?

[fol. 1293] A. I have studied real estate law, but I have never studied criminal law.

Q. Never come in contact with that at all?

A. No, I didn't.

Q. Do you believe the Grand Jury can indict an innocent man?

A. It could be done.

Q. I beg pardon?

A. It has been and could be done.

Q. Do you believe in the presumption of innocence?

Mr. Turkus: I object to the form of the question. The question is whether jurors will follow the law.

Mr. Barshay: That is the law, isn't it?

The Court: Have you finished the question?

Q. Do you believe, sir, that the defendant Buchalter is presumed innocent of the charge under the law?

The Court: Objection sustained.

Mr. Barshay: Respectfully except.

Q. That is assuming, of course, that the Court shall tell you that.

Mr. Turkus: I object to that question.

The Court: If the Court should so charge, will you follow the charge?

The Talesman: I will.

Q. By this time you know what I am saying to you will be the result of the Court's charge, don't you, Mr. Juror?

A. I think so.

Q. You know the Court will charge you presumption of innocence, don't you?

A. I know that that is a Court charge.

[fol. 1294] Q. I wanted to save time too. Do you believe that Mr. Buchalter, now that the Court says it will charge you, is presumed innocent of this crime just as any other person in this court-room? Do you know that?

A. I know that.

Q. Will you follow that instruction?

A. Yes, sir, I will.

Q. That is a substantial right given to the defendant. You believe that?

A. I know.

Q. It is no mere phraseology or a privilege, you understand that?

A. Yes.

Q. And do you believe, if the Court shall charge you that that presumption remains with him throughout this trial until twelve of you say unanimously you are convinced beyond a reasonable doubt that the District Attorney has sustained the burden of proof beyond a reasonable doubt—

Mr. Barshay: Do you mind sitting down?

Mr. Turkus: No, I am going to object. I object to the form.

The Court: If the Court shall so charge you, will you follow the charge?

The Talesman: I will.

Mr. Barshay: You can object without announcing it by standing.

Mr. Turkus: You told me to sit down.

Mr. Barshay: I did not tell you to sit down.

Mr. Turkus: Most disagreeable—

[fol. 1295] Mr. Barshay: You know that is not right.

Mr. Turkus: You know it is true. Go ahead.

Q. Everything I asked you with respect to your belief is prefaced by the understanding that unless the Court so charges you, don't you accept it from me. You understand that?

A. I do.

Mr. Turkus: May I just register an objection, because I think Mr. Barshay does not understand what I refer to.

The Court: Overruled.

Mr. Turkus: It is not the question of the belief——

Q. If the Court shall tell you, Mr.——

A. The name is Batterson.

Q. If the Court shall tell you that at no time does the burden of proving the defendant's innocence shift to the defendant, but it at all times remains with the prosecution, will you follow that instruction?

A. If the Court so charges.

Q. So that if the Court should so charge you, will you at any time demand some explanation forthcoming from any defendant, or some explanation of the charge against him?

A. No, not if the Court has so charged.

Q. If the Court shall charge you that silence on the part of any defendant, if he refuses to take the stand or he does not take the stand in the wisdom of his counsel, his failure to do so shall draw no unfavorable inference against him from you, will you follow that?

A. I will follow that.

Q. Strictly to the letter?

A. If the Court so charges.

[fol. 1296] Q. Yes. Assuming that the Court will. And will you demand that the District Attorney sustain his burden beyond a reasonable doubt?

A. Yes, I will.

Q. What a reasonable doubt is shall be told to you by his Honor. Will you follow it?

A. I will.

Q. If the Court shall charge you that if any evidence here is subject to two interpretations, you must give it the innocent one, will you follow that?

A. I am sorry, I do not understand that question.

Q. If there is any piece of evidence here that comes from the witness stand and is subject to two interpretations, an innocent one or a guilty one, if the Court shall tell you that you must give it the innocent one, will you follow that?

A. Then I will, yes, if the Court so tells.

Q. If the Court charges you that if you in your own mind cannot decide whether it is an innocent interpretation

or a guilty one, you must give the benefit of it and make it an innocent interpretation, will you follow that?

A. That is the way I understand, yes, sir.

Q. You know you are the judge of the facts in this case if you are chosen as a juror, do you not?

A. Yes, sir.

Q. In others words, you decide where the truth lies in this case and whether or not the District Attorney sustained his burden beyond a reasonable doubt.

A. Yes.

Q. You are the one to decide that. Do you understand that?

[fol. 1297] A. I understand that.

Q. It is a very important duty. Does your youth influence you in any way as to your ability to decide that important issue?

A. Does my youth influence me?

Q. Yes. Is there anything because of your youth that will cause you to be influenced in this case, which is so publicized and so important?

By the Court:

Q. You are thirty years old?

A. Thirty-four.

By Mr. Barshay:

Q. How old are you?

A. Thirty-four.

Mr. Barshay: I did not know that. He looks——

The Court: He is the same age William J. Bryan had when he ran for the first time for President of the United States.

Mr. Turkus: Youth is something that everybody outgrows.

Mr. Barshay: That is quite obvious, Mr. Turkus.

The Court: Not always.

Q. Now, Mr. Turkus has spoken about accomplice testimony. If the Court shall tell you that you are the one to decide whether or not to believe an accomplice, you will follow that instruction, won't you?

A. I will.

Q. Will you take into consideration the character of the accomplice as he takes the stand and offers his testimony? [fol. 1298] A. Yes, I will.

Q. And will you weigh the demerit marks in his own life, his criminal life, his robberies, whatever crimes he committed, in accepting or rejecting his testimony?

A. Yes, I will.

Q. Will you as a juror look into the motive for that man giving his testimony?

A. I will.

Q. Will you weigh it carefully, if you find that he has a motive either in saving punishment for himself or some other reason?

A. If he has a motive I will consider it.

Q. And if he says he has not a motive but you find from the facts, from his own cross-examination, from his own direct examination, even though he denies he has a motive, that he really has a motive which he is concealing—

A. Should I find from the facts?

Q. Yes.

A. If I should find from the testimony that he has a motive I will consider it.

Q. Even though he denies that he has a motive?

A. Even though he denies it.

Q. In other words, you will be the one to decide whether or not he is worthy of belief, isn't that so?

A. Yes, sir.

Q. And so his raising his right hand and his offering to tell the truth, unless he does so in your mind, you will reject it, won't you?

A. I will.

Q. So you will be the one who will search for the truth as each witness takes the stand, won't you?

A. I will.

[fol. 1299] Q. And if you find that the treatment of the prisoner, whoever he may be, as rendered to him while he is waiting to testify here was of such a nature as would induce a man or cause a man to tell a lie, you would take that into consideration before you would accept his testimony?

A. Yes.

Q. No doubt about that?

A. I would.

[fol. 1300] Q. Now, with respect to the accomplice, if you find that the man takes the stand and says, "I am an accomplice," and the proof is that he never even saw or spoke to Buchalter, you will take that into consideration, too, won't you?

Mr. Turkus: I object to that. That is too specific. It is too specific as to this particular case, and it is ambiguous as to meaning, so there is a double objection.

The Court: I do not understand it myself. Sustained.

Mr. Barshay: I will reframe it.

Q. If you find here that the man who says he is an accomplice of Buchalter has not even seen or ever spoken to Buchalter in his whole life, will you take that into consideration in deciding whether or not he is an accomplice of Buchalter? Is that clear, sir?

A. Well, if I am convinced that he has never seen—

The Court: That is not the controlling factor.

Mr. Barshay: I don't say it is.

The Court: It is a question of law. You don't have to have personal inspection of an accomplice.

Mr. Barshay: I respectfully except, sir.

The Court: Can be an accomplice at a distance.

Mr. Barshay: I respectfully except. Can I ask a question, and I will take an exception.

The Court: Notwithstanding there is no objection. I am ruling it out because it is not accurate. It is a question [fol. 1301] of law.

Q. If the Court shall charge you that character of any defendant is not an issue in this case, has no bearing at all unless the defendant particularly involved decides to put it in issue, will you follow that law?

A. I will.

Q. So that the only thing we are trying here now will be the accusation set forth in the indictment—nothing else?

A. That is right.

Q. No other extraneous matter will be used by you except as his Honor may charge you you have a right to use it?

A. Yes, sir.

Q. Is that correct?

A. That is clear.

Q. Now with respect to the evidence which may be offered tending to corroborate an alleged accomplice, will you con-

sider the source from which that comes, who is it that offers such corroborating evidence—will you?

A. Yes, I will consider all sources.

Q. And if it is a tainted or polluted source, if it comes from a man who has been a criminal himself and murderer himself, you will be very careful before you consider accepting it, won't you?

A. Very.

Q. And if you find that he, too, has a motive in escaping punishment for his own crimes, whoever he may be or how many they may be, you will be very careful, won't you, before you will accept that testimony?

A. Yes.

[fol. 1302] Q. Now, Mr. Turkus has said that there will be three summations. You understand that each defendant is entitled to have a counsel represent him and sum up for him?

A. I do.

Q. Numbers mean nothing in this case, do they, number of counsel?

A. No.

Q. Is that so?

A. The fact—

Q. I mean, you are not influenced?

A. The fact that there is one or ten makes no difference to me.

Q. That is right. That makes no difference to you, does it?

A. No, it does not.

Q. And if each counsel urges his arguments based upon the evidence, you won't call it repetitious because some of the arguments may coincide for one defendant as that of another?

Mr. Turkus: I object to the form of the question.

The Court: Sustained.

Q. You said that. You understand that we are not here to repeat arguments—

The Court: This is going far afield.

Q. You understood that when Mr. Turkus said that three times an argument's repetition has no greater force? You understood that, didn't you?

A. I understood that and I answered that it—

Q. But you won't fail to heed the individual argument of each lawyer, even though it may coincide with the argument of the preceding lawyer, would you?

A. No.

Q. Each lawyer has a right to view the evidence in his own [fol. 1303] light and on behalf of his own defendant; is that so?

A. I understand that.

Q. You know that each lawyer shall be speaking for his own defendant only—you understand that?

A. Yes.

Q. Do you appreciate sir, that you must render a separate verdict with respect to each defendant in this case?

A. Yes.

Q. And that in reality each one is getting a separate trial?

A. I understand that.

Q. And if the Court shall charge you that the evidence given against one defendant shall be used against him and no other, will you follow that instruction?

A. I will follow that.

Q. And even though the trial takes a long time, will you keep in mind, will you make every effort to keep in mind the evidence as it is offered against the respective defendants?

A. I will.

Q. Do you think, sir, you possess the courage to render a verdict based upon the evidence without fear or favor to either side?

A. I know I do.

Q. If you find a reason for doubt arising out of the evidence here, if the Court charges you you must give it to the defendant, will you do so?

A. Yes.

Q. Numbers of jurors will not influence your judgment if you personally, after reasoning and logic and weighing of the evidence, are not convinced beyond a reasonable doubt that our defendants have been proven guilty beyond a reasonable doubt? They won't influence you at all, will [fol. 1304] they?

A. They won't.

Q. Numbers of jurors?

A. No.

Q. And as long as you reasonably feel that there is a reason for doubt with respect to the defendant Buchalter, you will give it to him?

A. I will.

Q. No doubt about it?

A. No doubt.

Q. Can Mr. Buchalter entrust to you every legal right that he has in this case?

A. I will follow the Judge's instructions and be fair.

Q. The Judge will instruct you on the law, Mr. Batterson, but as far as the facts are concerned?

A. I will judge the facts.

Q. You will judge the facts yourself?

A. Yes.

Q. You will accept no instruction from anyone, just your own judgment will be the all-important factor in this case, isn't that so?

A. Yes.

By Mr. Talley :

Q. Mr. Batterson, what is your position in this Federal Savings Loan Association?

A. Clerk.

Q. Yet you say you do practically everything in connection with that company?

A. Yes, sir.

Q. How many employees are there besides yourself?

A. About twenty, twenty or twenty-five.

Q. What do they do?

A. We have stenographers, we have tellers, we have rent [fol. 1305] collectors.

Q. I do not hear you.

A. We have stenographers, tellers and rent collectors, cashier, executives.

Q. They do something, don't they?

A. Oh, yes.

Q. You mean, when you say that you do everything, that you do a little bit of everything that they do?

A. I should say that most of my time is taken up at the cash window.

Q. Is it essentially a loan association or is it a savings institution?

A. It is, for all practical purposes, a savings bank whose monies are used in loaning out on mortgages.

Q. Loaning out on mortgages?

A. That is right.

Q. On personal property or real estate?

A. On real estate.

Q. And you are engaged in that business presently?

A. Yes, I am.

Q. And have been for the last year?

A. Five years.

Q. Lending money on real estate in the City of New York?

A. Yes.

Q. You understand, Mr. Batterson, that it is the law that when a man is accused of crime the burden of proving his guilt is always on the People?

A. I understand that.

Q. And never shifts from the People to the defendant. Do you understand that?

A. I do.

Q. And if the Court should charge you that in the event that any of these defendants should not testify in this trial and should further charge you that you are not to indulge in [fol. 1306] any unfavorable inference against them because they do not take the stand, will you be guided in arriving at your verdict according to those instructions?

A. Yes, I will.

Q. In other words, you will not hold it against a man?

A. No, I will not.

Q. A defendant in this case, because he does not take the stand, so advised that it is not necessary?

A. No, I would not hold it against him.

Q. Is there anything in the experience that you say you had in Chicago that would prejudice you against any defendant charged with crime in this city?

A. No.

Q. Was there an arrest in that case?

A. There was.

Q. Was there a trial?

A. There was.

Q. Did you testify?

A. No, sir.

Q. Were you the victim of the hold-up?

A. I was the victim of the hold-up, yes, sir.

Q. Was there a plea of guilty entered?

A. There were other people. This man that had committed the hold-up had held up many people, and he was convicted before I was ever called to the witness stand.

Q. That is, other victims of the hold-up besides yourself testified, is that right?

A. Other victims to other hold-ups. It was not tried on my case alone.

Q. He was not tried on your case?

A. No, sir.

Q. Then your case was not tried; it was the other hold-ups [fol. 1307] that this man engaged in that were tried; is that right?

A. You are right, yes.

Q. That episode has left no impression in your mind that would be unfavorable to these defendants, has it?

A. No.

Q. Did you read nothing about this case in any of the newspapers in this city?

A. Yes, I read about the case.

Q. And in what papers did you read it?

A. I read it in the *World-Telegram*.

Q. In any other paper?

A. No, I avoided such reading.

Q. Did you read the *Mirror*?

A. No.

Q. Did you read "The Life Story of Judge O'Dwyer" in the *Evening Journal*?

A. No, I didn't.

Q. Did you see the names of any of these defendants in any account which you read in any paper?

A. Yes, in the *World-Telegram*.

Q. Did you form any impression about them, these defendants who were thus named, from the reading that you did in the *Evening Telegram*?

A. No, it was merely a statement of the charge.

Q. So that you say now that you have no impression one way or the other about any of these defendants?

A. No, I don't say that.

Q. What do you say?

A. I said that I did not gain any impression from this article.

Q. Did you gain an impression about them or any of them from any other source?

A. I have heard of the defendants before I was ever called for jury duty.

[fol. 1308] Q. And when you heard of them, or from whatever you did hear about them, did you form an impression about any of them?

A. Yes.

Q. And was that impression favorable or unfavorable to them or any of them?

Mr. Turkus: I object to the form of the question.

The Court: Overruled.

A. The impression that was formed in my mind, the impression that was formed in my mind was unfavorable to the defendants.

Q. And you still have that impression, I take it, haven't you?

A. I have.

Q. And would it require some measure of testimony to remove that impression from your mind, if accepted as a juror?

A. I have an impression of the defendants, but I would not hold that against them were I put on the jury.

Q. But you would enter the jury box with that impression in your mind, wouldn't you?

A. I will probably always have the impression.

Q. And something would be required to remove that impression from your mind, if it were to be removed?

Mr. Turkus: Objected to.

Q. Isn't that so?

Mr. Turkus: It has already been answered.

The Court: Sustained.

Mr. Talley: Exception.

[fol. 1309] Q. What would you require to have that impression removed from your mind?

A. I don't ask that it be removed.

Q. You are content to have it remain in your mind?

A. It would not affect my judgment of the case.

Q. You are sure about that, Mr. Batterson?

A. Yes, I am positive.

Q. The fact is, you went into the jury box with an unfavorable impression in your mind, but you say that impression would not affect your verdict; is that right?

A. No, I would never allow it to.

Q. Are you sure you can differentiate between the impression that you have in your mind which you say is unfavorable and your ability to wipe it out when you come to consider the guilt or innocence of these defendants?

A. I am certain

Q. Don't you think your verdict would be affected by that impression you have?

Mr. Turkus: I object to it. It has been answered three times.

The Court: Sustained.

Mr. Talley: Exception.

Q. If the evidence in this case was evenly balanced in your mind, that is, the scales were even with respect to the guilt or innocence of these defendants or any of these defendants, would that scale be tipped against them by your unfavorable impression?

[fol. 1310] Mr. Turkus: Objected to. That is a legal question.

The Court: It is repetitious. Sustained.

Mr. Talley: Exception.

Q. Whom did you talk to with respect to this case or any of the defendants here?

A. I would like to have the question again, please.

Q. With whom did you talk about this case as the result of which talks you gained this unfavorable impression that you speak of?

A. I did not say I had talked with anyone.

Q. Yes, you did tell me that, that you had talked with people and formed that impression. I am sorry, but that is what you told me.

A. I said that I had talked with people on this case after being called, but I did not say that any impressions were formed as the result of those talks. Impressions had been formed before I was ever called.

Q. All right. From what were they formed?

A. By what were they formed?

Q. From what? What source? What information did you have upon which you based those impressions?

A. I merely heard of the defendants in an unfavorable light.

Q. Heard of them from whom?

A. From probably the newspapers, possibly the radio.

Q. Have you any recollection of having listened on the radio?

A. No.

Q. To anybody who discussed this crime?

A. No.

[fol. 1311] Q. Or these defendants? You have no recollection of any of the persons from whom you heard, as you say, the things upon which you based your unfavorable impression?

A. No.

Q. But before you were called as a juror here, you did have an unfavorable impression against these defendants?

Mr. Turkus: Objected to. It has been answered.

The Court: Sustained.

Mr. Talley: Exception. I have no further questions.

By Mr. Rosenthal:

Q. When you originally were questioned by counsel for the defendant, did I understand you correctly to say that you had merely read the World-Telegram about the case itself; is that correct?

A. That is what I said, yes, sir.

Q. And when you were further questioned by counsel you had made the statement, had you not, that you had read nothing else about the case; is that correct, sir?

A. I think that is true, yes.

Q. Now, the fact is, sir, is it not, that you now don't remember whether you read the names of these defendants in newspapers prior to your being called as a juror?

A. I definitely have heard of all three individuals before I was called to the jury.

Q. Do you definitely remember, sir, whether or not you read their names or the name of any of the defendants in any newspapers prior to the time that you were called for [fol. 1312] jury service?

A. I have.

By the Court:

Q. Is your memory hazy on that?

A. My memory is hazy. I know I have read of them and I saw their names in the newspaper.

Q. Can you place what newspaper?

A. I cannot.

By Mr. Rosenthal:

Q. Have you any idea, sir, of any particular newspaper or any particular time that you read concerning any particular defendant on trial?

Mr. Turkus: Objected to. It has been answered now at length.

The Court: Sustained.

Mr. Rosenthal: Respectfully except.

Q. Do you recall whether or not now you heard and discussions over the radio in respect to any one of these defendants?

A. I recall no discussions.

Q. Do you recall any talk of any character over the radio?

A. No.

Q. In answer to Judge Talley you said that probably you had heard over the radio some mention of the defendant; is that true?

The Court: He said "possibly".

Mr. Turkus: Objected to. "Possibly." Objected to.

The Court: Objection sustained.

Q. Can you tell us or have you any idea of who it was you [fol. 1313] possibly heard over the radio discussing any of these defendants?

A. No, sir.

Q. So that when you were first called for jury duty and first ascertained that it was in respect to this particular case, at that time your state of mind was unfavorable to one or more of these defendants, is that true, because of the impression that you had gained? Is that true, sir?

A. Yes.

Q. Then subsequent to being called for jury duty and after you had learned the particular case that was involved, you had discussions, or your friends had discussion with you concerning one or more of these defendants; is that true?

A. That is true.

Q. And those discussions covered a period ending when?

A. The discussions that I had were merely with my wife and my employer and did not concern the case, that is, did not concern any individuals in the case, but concerned the possible length of time that I might be under the jurisdiction of the court.

Q. Possibly you misunderstood me. My question is directed to the answer which you gave to Mr. Barshay—and if I am wrong, correct me, sir—in which you stated that numbers of people had spoken to you and given you their impression.

A. I don't recall saying that.

Mr. Turkus: That was the other juror, the one before.

Mr. Rosenthal: I have it written down.

Mr. Turkus: That was Wallach.

[fol. 1314] Mr. Rosenthal: Was it? I am not entering into a discussion with you. I have my own notes as to what this jurymen said. Let me withdraw the question and put it this way:

Q. Did you not state, in answer to questions by lawyers other than myself, that people had spoken to you concerning one or more of these defendants since you were called for jury service? What is your answer?

A. I may have.

Q. Is your memory indefinite as to whether you had stated, in answer to a question propounded by one of the lawyers, that you had spoken or people had spoken to you since you were taken for jury service on this case, concerning one or more of these defendants?

A. My recollection is that any discussion that I had on this case outside of the court-room only concerned the nature of the charges and the possible length of time that I would be kept away from my work.

Q. Do you say now, sir, that in answer to lawyer's question who preceded me—

By the Court:

Q. References have been made here to the length of the trial. You realize the trial is on now?

A. Yes, sir.

Q. So you won't be afraid of the length of the trial. It is possible that most of its length may relate to the selection of the jury.

A. Yes, sir.

Q. Not the taking of testimony. So don't be scared.

(Pending question read.)

[fol. 1315] Mr. Rosenthal: I will repeat the question.

By Mr. Rosenthal:

Q. Do you say now that you did not answer, in response to lawyers' questions who preceded me, that certain persons had discussed with you one or more of the defendants after you had been summoned for jury duty in this case?

Mr. Turkus: I object to it.

The Court: Sustained as answered.

Mr. Rosenthal: I respectfully except. There is no answer, if your Honor please.

Q. Well, with the exception of your wife and your employers, did anybody else discuss with you or you with them anything concerning any of the defendants since you were called for jury service?

A. No.

Q. You are positive of that?

A. Yes.

Q. Was the discussion with your employer in any wise directed to an opinion which he had formed as to any of the defendants?

A. No.

Q. As you sit here now you have an unfavorable impression or an opinion formed as to one or more of these defendants, is that right, sir, as you are seated here now?

A. Yes.

Q. Your answer is yes?

A. Yes.

Q. An issue may be raised in this case as to the truth or falsity of a statement possibly made under oath by one or more of these defendants. In other words, assuming that [fol. 1316] one of the defendants were to take the stand in his own behalf and place his integrity or his truthfulness in issue as against some other person—is that clear to you as far as I have gone?

A. Yes, sir.

Q. —having in mind that as against that defendant, and as you sit here now you have an unfavorable opinion—is that clear to you?

A. That is clear.

Q. —you say now that with such an issue presented, that the opinion which you hold as to the defendants or any one of them is of such a nature that you could strictly lay it aside without allowing it to weigh on your mind whatsoever and differentiate between the opinion you have and the individual who is testifying?

A. I would set aside any impressions that I have before judging the man's guilt or innocence.

Q. Well, now, assuming, sir, that you were seated in a case where you had no impression and had never heard of the defendants——

A. Yes.

Q. —as differentiated between the state of mind which you are now in as to one or more of these defendants——

Mr. Rosenthal: Would you mind sitting down until I am finished? Will the Court direct Mr. Turkus to sit down? I am very much perturbed when he stands up.

The Court: Don't answer until the Court rules.

Q. Do you understand the question so far?

A. Yes.

Mr. Turkus: I object to it.

[fol. 1317] Mr. Rosenthal: I have not finished the question.

Mr. Turkus: Then you have asked for an answer before you finished.

Mr. Rosenthal: You do not understand English.

Mr. Turkus: Not the way you speak it, from Queens.

Mr. Rosenthal: I said as far as I have gone. You are so good from the slums of Brooklyn.

Mr. Turkus: I have advanced; you have gone into the slums. You have been pretty low ever since you came here, too.

Mr. Climenko: If your Honor pleases, I object to these statements.

The Court: Please! Everybody come to order. Finish the question, Mr. Rosenthal.

Mr. Rosenthal: I will do as your Honor directs. I would not stoop as low as Mr. Turkus.

The Court: The Court asks everybody to come to order. That meant no further exchange of compliments.

By Mr. Rosenthal:

Q. Do you recall the question, sir?

A. I do.

Q. As far as I have asked? Can you state or tell me whether or not under a set of circumstances such as I have described here, the quality or quantity of evidence which you would require in order to convince you, under the Judge's charge, of what is necessary to establish a man's guilt beyond a reasonable doubt would or would not be [fol. 1318] different than the quality or quantity of evidence which would be necessary in this case because of the opinion which you now have?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

I challenge the juror on implied bias.

The Court: Try the challenge.

(Paul S. Batterson was duly sworn.)

By Mr. Rosenthal:

Q. You are now under oath, Mr. Batterson, you understand that?

A. Yes, sir.

Q. If the same questions were repeated to you as were asked of you before you were under oath, would you make the same answers?

A. I made no answer to the question that was put to me.

The Court: The questions.

Q. Those questions which were asked and which you gave answers to, if they were repeated to you now would you make the same answers as you made prior to the time of your being put under oath?

A. I would.

The Court: Anything further?

Mr. Barshay: Nothing further on this challenge.

The Court: Anything by counsel for Weiss?

Mr. Talley: I stated before, Judge—perhaps you did not [fol. 1319] hear me—that I had nothing further. I join in the challenge.

The Court: Anything by counsel for defendant Buchalter?

Mr. Barshay: We join in the challenge, your Honor.

The Court: Overruled.

Mr. Barshay: Exception.

Mr. Talley: Exception.

The Court: Any further questions?

Mr. Rosenthal: I have no further questions.

The Court: Any peremptory challenge?

Mr. Turkis: Mr. Batterson is satisfactory to the People of the State.

Mr. Talley: Challenged peremptorily by the defense, reserving all exceptions for all defendants.

ALFRED J. CLEARY, of 295 Maple Street, Brooklyn, New York, was examined as to his qualifications.

By Mr. Turkus:

Q. Is Maple Street part of the downtown section of Brooklyn?

A. No, that is in the Lefferts Estate, Maple and Nostrand.

Q. Have you lived in that section of Brooklyn for a number of years?

A. Yes.

Q. Are you married, sir?

A. Yes, sir.

Q. And do you reside with your wife and family?

A. Yes, sir.

[fol. 1320] Q. Have you children?

A. Yes.

Q. You are listed as a supervisor. Is that a correct listing?

A. That is now, but I am assistant manager now.

Q. What type of work do you do?

A. I am in the loan business. I represent the National Loan Society in the Bay Ridge section of Brooklyn. We come under Article 9 of the Banking Act. We make personal loans.

Q. What is the name?

A. National Loan Society.

Q. Is that connected with the National City Bank?

A. No.

Q. Has it any banking connections?

A. Investment Bank & Securities Corporation. That is the parent concern.

Q. Does your job as manager bring you on the outside, or do you work inside?

A. In and outside.

Q. Do you have any contacts of any kind, nature or description in the garment or clothing industries?

A. By telephone.

By the Court:

Q. Industrial bank and what?

A. Under Article 9 of the Banking Law.

Q. What is the name?

A. National Loan Society.

Q. And what is the bank that backs it?

A. That is a little confidential information.

Q. You just gave the name.

A. Industrial Bank & Securities Corporation.

By Mr. Turkus:

Q. I think we got to the point, Mr. Cleary, where you said [fol. 1321] you have contact by telephone. Is that a telephone discussion with various manufacturers?

A. Yes, in a sense. It is really collections and investigations for people that have applied for credit.

Q. Then business does bring you into those areas of the city and in those industries in connection with credit?

A. Yes.

Q. Do you investigate people in the clothing district in Manhattan?

A. We have several accounts in the clothing district, but individuals, not manufacturers.

Q. Does your company make loans to manufacturers of clothes?

A. No.

Q. Is it one of those personal loans?

A. Yes.

Q. Small loans under Small Loan Law?

A. Yes.

Q. That would be loans up to three hundred and not exceeding three hundred?

A. Yes.

Q. Do you check credits with clothing manufacturers?

A. No, we check the employment record of employees that have applied for loans, through their employers.

Q. Do you come in contact with any persons or any individuals in the clothing trucking business?

A. Yes, we have accounts among the chauffeurs.

Q. And do you check credits there?

A. Yes.

Q. Are you familiar with any of the officials of the clothing trucking union?

A. Not personally, other than by—

Q. Reputation?

A. Yes.

[fol. 1322] Q. How long have you been in this business?

A. About eight years.

Q. Did your work bring you into contact with the office of Thomas E. Dewey?

A. None whatever.

Q. Is the name of Lepke and Gurrah familiar to you in that area?

A. No.

Q. Name of Hyman (Curley) Holtz?

A. No.

Q. Philip Orlofsky?

A. No.

Q. Abe Beckerman?

A. No.

Q. Belia, Bruno Belia?

A. No.

Q. The name of Bellanca or Tosca?

A. No.

Q. There have been various names which I have mentioned from time to time with other prospective talesmen. Through your line of work is there any significance to those names?

A. None whatever.

Q. Do you have any contacts on the waterfront?

A. Yes, we have accounts there similar to the garment district.

Q. And in those accounts do you ascertain credits of various employees?

A. Yes.

Q. With the employers?

A. Yes.

Q. Does your business in anywise bring you in contact with union officials?

A. None whatever.

Q. Have your conversations in the garment and clothing area been limited to telephone?

A. Yes, except on occasions make a personal call.

[fol. 1323] Q. Where you have gone to the manufacturing plants?

A. Yes.

Q. Have you ever discussed with any individuals any of the investigations of Thomas E. Dewey?

A. No.

Q. In the garment and clothing areas?

A. No.

Q. Or have you discussed with any individuals the investigations by Judge O'Dwyer?

A. No.

Q. Have you in these areas heard any discussions?

A. None whatever.

Q. With regard to newspapers, do you read any particular newspaper?

A. Yes.

Q. What one is that?

A. The *Journal* in the evening and the *News* in the morning.

Mr. Talley: Will you speak up?

The Talesman: I do not see any difficulty for anybody to hear if you have normal hearing.

Mr. Talley: Just keep your voice up, if you please.

Q. Have you read the articles about the life of Judge O'Dwyer?

A. I read one article on that in the *Journal*. I did not continue. One instalment.

Q. No other articles?

A. None whatever.

Q. Do you know the District Attorney of the County, Judge O'Dwyer, personally?

A. No, I don't.

Q. Or do you know Assistant District Attorney Joseph, Assistant District Attorney Klein or Turkus?

A. No.

Q. Do you know any Assistant District Attorney on [fol. 1324] Judge O'Dwyer's staff?

A. No, I don't.

Q. Is there any impression that you have in your mind as the result of anything that you have read in the newspapers?

A. Well, I have been impressed, I am impressed by everything I read, but I have not formed an opinion on this case.

Q. With respect to the names of the nine lawyers that represent these defendants here, I have mentioned their names in the former positions that they occupied—are any of those names familiar to you by way of acquaintance?

A. None whatever. I have known of Judge Talley. I do not know him personally, but I think I heard him speak one time a considerable time ago.

Q. You have never been out with him socially or been to his home?

A. No.

Q. Would that slight contact have any bearing in connection with your ability to decide this case on the evidence?

A. None whatever.

Q. Do you know anybody in the law offices of the respective lawyers?

A. No, sir.

Q. Do you know any member of the bar who specializes in the defense of criminal cases as a specialty?

A. No.

Q. Did you tell me you were in that business for the past ten years?

A. Eight years.

Q. And that you now——

A. Pardon me, seven years, seven and a half.

Q. And you have gone up the scale to position of assistant [fol. 1325] manager?

A. Yes.

Q. Have you heretofore served as a juror in any case?

A. Never.

Q. That would be neither civil nor criminal case?

A. Never.

Q. Will you, if accepted as a juror in this case, take the law implicitly from Judge Taylor?

A. Yes.

Q. Will you give those defendants on trial every legal right, every Constitutional privilege and immunity that Judge Taylor says defendants on trial should have?

A. Yes.

Q. By the same token will you use common sense and understanding in weighing this case?

A. Yes.

Q. Do you have any prejudice or do you find any fault with the prosecutor in solving a case by employing the use of accomplice testimony?

A. I have nothing against the prosecutor, but I would have some difficulty in accepting the testimony of an accomplice.

Q. Is that difficulty such that you would not believe an accomplice under any circumstances?

A. Circumstances alter cases. As to this case I would hesitate to a great degree in accepting the testimony of an accomplice.

The Court: We will resume at two o'clock.

Mr. Cuff: Judge, may I ask now whether you are going to hold a night session tonight, because I shall have to make certain preparations.

The Court: We are going to work late. I am not prepared to say how late. That depends upon future conduct. If capricious conduct in peremptory challenges is indulged [fol. 1326] in by either side, it will have a bearing upon the length of time which the Court will work.

Defendants are remanded.

Mr. Climenko: On behalf of the defendants, I take exception.

The Court: Order while the defendants are remanded.

Mr. Climenko: If your Honor pleases, the defendants take exception to your Honor's remarks in so far as they anticipate that possibility.

The Court: Wait just a minute. The talesmen will kindly pass out. Come back at two o'clock.

Mr. Talley: Your Honor will remember that tonight is the beginning of registration and the polls do not open until five o'clock, the hour which you called the jurors back.

The Court: The Court is ready to register on Saturday. I want the talesmen out before the Court says anything further.

Mr. Cuff: The matter which I inquired, Judge——

The Court: By the ardency of the protest just rendered by defense counsel, the Court is prompted to say something it had not intended to say, and that is that this morning has been wasted by the excusing of two obviously competent and unbiased jurors. The Court in its opinion views these as [fol. 1327] capricious exercise of peremptory challenge.

Mr. Climenko: To which remarks the defense takes exception.

The Court: Which will do you no good whatever, either now or at any time.

Mr. Climenko: The question of whether or not implied bias was shown is preserved by this record and is not foreclosed by your Honor's remarks.

(Whereupon a recess was taken until 2:00 P. M.)

Afternoon Session—Trial Resumed

ALFRED J. CLEARY, resumed the stand and was questioned further as to his qualifications.

By Mr. Turkus:

Q. At the point of recess, Mr. Cleary, I think in words or substance you said as to this case you have some prejudice against accomplices.

A. I believe that I would have in any case, an accomplice in any case. There would be some doubt in my mind as to an accomplice testifying against another accomplice, participant, rather.

Q. In other words, you would have a doubt as to a case in which accomplice testimony is used, solely because there is accomplice testimony given?

Mr. Rosenthal: I object to it upon the ground it is a legal question.

[fol. 1328] The Court: Sustained.

Q. Is your prejudice against accomplice testimony such as would cause you to reject the testimony of an accomplice no matter what the circumstances?

Mr. Rosenthal: I object upon the ground that it incorporates in the statement facts which have not been testified to by the prospective juror.

Mr. Turkus: I am asking him a direct question, if your Honor please, not containing any facts.

By the Court:

Q. If the Court should charge you that you have a right to accept the testimony of an accomplice provided you find that it is corroborated by believable evidence tending to connect the defendants or any of them with the commission of the crime, would you accept the testimony of the accomplice with that qualification?

A. I would, with hesitation, your Honor.

By Mr. Turkus:

Q. What I am trying to find out, Mr. Cleary, is this: Have you such a bias or prejudice against accomplice testimony as would cause you to reject it no matter what the law may be as charged by the Court?

A. No, I would not reject. I would be guided by the Court's instructions wholly, but there is a little thought that I think that I would have to have accomplice testimony corroborated. I would have to have something iron clad.

[fol. 1329] Q. The law requires that. In other words, if the prosecutor only had the testimony of an accomplice or accomplices, the Judge would have to direct you to acquit the defendants.

A. Yes.

Q. Because the law says there could not be any such conviction. I am going beside that point. Assuming that there is the testimony of an accomplice in the case, and assuming further that there is other evidence in the case tending to connect the defendants with the commission of the crime, and you believe that other evidence, and from all the evidence you believe the accomplice, I am trying to find out is your state of prejudice such that no matter what the corroboration was you would reject it?

A. No, it is not such that I would reject it wholly, but there is a certain doubt in my mind as to the credibility of an accomplice's testimony. I have a little hesitation there about accepting it. That is my own natural belief, my own honest belief.

Q. Is your state of mind such that a bad man can never tell the truth?

A. Oh, no, they can tell the truth. In some circumstances they may be telling the truth for a reason. A man does not get honest—everybody is not basically dishonest, basically bad, but there are some men that can be reckless with the truth in order to benefit themselves.

Q. Yes. Well, is your prejudice such that it would go to a point where you would exercise care and caution in [fol. 1330] weighing the testimony of an accomplice?

A. It is not prejudice, but I would weigh that especially.

Q. At least can I proceed that it is not that kind of a feeling or state of mind that you would reject it no matter how corroborated or no matter what the circumstances?

A. Not in the least.

Q. In other words, as to the item of the accomplice's testimony, will you look at the background of the accomplice?

A. Yes.

Q. Look at his past criminal record?

A. Yes.

Q. Look at his past associations?

A. Yes.

Q. Look at every vicious or immoral act that he may have committed during his lifetime?

A. Yes.

Q. And will you consider all those things in weighing his believability?

A. Yes.

Q. And will you weigh his believability with care and caution applying all of those rules?

A. Yes, but I would have a certain hesitation about it because maybe—I don't know how to express myself—it is not a prejudice.

Q. Let me take it this way: If part of The People's case rests upon the testimony of an accomplice, is your state of mind such that you could not be a fair and impartial juror?

A. Not in the least.

Q. Well, is your state of mind such that you would have a prejudice against The People's case?

[fol. 1331] A. I have no prejudice against The People's case, but there is a certain doubt in my mind about accepting the testimony of an accomplice.

Q. Well, is it such a doubt as to that as would impair your ability to serve as a juror in a case where accomplice testimony is given?

A. Not in the least. As I understand you, here is a man that has never committed a crime and he is a supposed accomplice. I would accept that testimony without hesitation. But there is a certain doubt in my mind as to considering the background and the record of an accomplice. I would accept that testimony with hesitation.

Q. Well, let me ask you this: Do you find any fault with the prosecution, in order to solve a case, to accept the testimony of a co-participant in the crime or an accomplice, against the other defendants?

A. None whatever.

Q. Is your hesitation such that you will apply care and caution to the believability of the accomplice? Is that what it is?

A. Yes.

Q. Then may I go along with the understanding that if that kind of testimony is amply corroborated under the instruction of the law, that you have no bias or prejudice which would impair your ability to serve in this case?

A. No, it would not impair my ability.

Q. Would it impair your ability to be fair to either side?

A. It is not a case of being unfair. It is just that there is a certain doubt in this particular case as to the truth or [fol. 1332] as to the reliability. I have not heard the evidence as yet and I really could not express an opinion on that. Maybe the evidence will prove, on the other hand, the opinion I have now.

Q. You say you have an opinion now?

A. Yes.

Q. Does the opinion extend to guilt or innocence?

A. Not as to guilt or innocence, but the opinion now that I have is I would be rather skeptical to accept the testimony of an accomplice of this supposed charge.

Q. Have you ever served on any jury before?

A. Never before.

Q. If part of The People's case rested upon the testimony of an accomplice, is your state of mind such that you could not be fair to The People of the State?

Mr. Rosenthal: I object on the ground he has answered twice that is not his state of mind. It is repetition.

Mr. Turkus: It is not.

Mr. Rosenthal: I am not arguing with you; I am addressing the Court.

The Court: Overruled.

Mr. Rosenthal: Exception.

A. If I can make myself clear, in accepting the testimony, say an individual saw a crime and he was taken as a defendant in that crime and he was being tried, he never before in his life committed any crime, I would accept that [fol. 1333] witness's testimony without hesitation, but whereas the man has been accused of every crime known, committed every crime, rather, I would accept that with a little hesitation.

The Court: That is the law. That is why corroboration is required-.

The Talesman: Yes.

Q. Were you starting to say something else?

A. No, I just cannot seem to get it over.

Q. You gave me the illustration where a man saw the crime. That man who sees a crime—

A. And he has been accused of that crime. He saw a crime and he is accused of it and he is held as a defendant in that particular crime.

Q. You cannot hold the defendant—

A. There are lots of circumstances that people have been charged with a crime and—

Q. You see—

A. I will try to make myself clear, Mr. Turkus. The testimony will be offered by a man, as I have heard, that has committed every crime. There is a certain doubt in my mind as to the credibility or the reliability or the truthfulness of that particular man.

Q. Right.

A. It does not pertain to being fair or impartial in this case. I could be fair or impartial, but I cannot accept that testimony whole-heartedly as being the truth.

Q. Assuming that there was other evidence in the case which tends to show that the accomplice is telling the truth—

A. I have not seen that yet.

[fol. 1334] Mr. Rosenthal: I object to the question.

(Question read.)

Mr. Rosenthal: I object to it. It was a legal question.

The Court: That is sustained, because that is not a correct statement of the law.

(Question read.)

Q. On the last part of the answer to the question you said you could not accept that testimony whole-heartedly—

A. No.

Mr. Rosenthal: I object to it. That is not what he said at all. He said he could not accept it whole-heartedly as the truth.

The Court: Finish the question.

(Question read.)

Q. —as the truth.

Mr. Rosenthal: I object to that. That is no question.

Mr. Turkus: I am asking him if that is what he said.

A. That is exactly what I said.

Q. Assuming there was other evidence in the case which to your mind satisfied you that the accomplice was telling the truth, would you still reject the testimony—

Mr. Rosenthal: I object to it, a question of law, and it does not properly present the question of law.

Mr. Turkus: I submit that is a very proper question to ascertain the state of mind of the prospective juror with [fol. 1335] respect to accomplice testimony where part of the case rests upon the testimony of an accomplice. There is no other way of finding out what is in his mind except by that type of question.

The Court: Isn't it possible to avoid argument on these objection-? The question is improper in form as to the law.

Mr. Turkus: I am not asking a legal question.

The Court: There must be evidence tending to connect the defendant with the commission of the crime.

Q. If the Judge were to charge you that the jury may find corroboration or support of an accomplice from believable testimony which tended to connect the defendants with the commission of the crime, would you follow that instruction of law?

Mr. Rosenthal: I object to it. That is not a proposition of law. They first have to believe the accomplice as well as finding other evidence.

The Court: Overruled.

Mr. Rosenthal: Exception.

Q. Do you understand the question?

A. Yes, as I understand your question I would be guided according to the Judge, but my bias, as you call it, has no bearing on this case. It is just that I would accept the testimony of an accomplice with hesitation, but not pertaining to this case. I tried to make that clear to you, Mr. Turkus. An accomplice's testimony is not wholly value-[fol. 1336] less, but I would accept it with hesitation.

Q. And with caution?

A. Certainly.

Q. All that I am trying to find out is, no matter what the circumstances were, no matter how corroborated, whether your state of mind is such that you would kick it out.

A. No, it would not have any bearing on my being a fair and impartial juror, but I would doubt the testimony of an accomplice in most circumstances.

Q. Is your state of mind such that you would not accept the testimony of an accomplice no matter how it was corroborated?

Mr. Rosenthal: I object to it.

The Court: Sustained. You have been sufficiently into that point.

Q. Have you had any reading with respect to any of the accomplices in this case, any reading matter?

A. I did not delve into it.

Mr. Rosenthal: I object to it on the ground there is nothing to show who the accomplices are in this case. I object to the question.

The Court: Overruled.

Mr. Rosenthal: Exception.

A. I really have not, anything about the accomplice.

Q. Have you read anything about the investigation of this case which caused you to form an opinion of any kind or description?

A. None whatever.

[fol. 1337] Q. Is there anything that you may have heard discussed with anybody that has caused you to form an opinion of some kind?

A. None whatever.

Q. Has the impression that you have and the opinion that you have been created by some of the questions that

were asked by, the defense lawyers of other prospective jurors?

A. No, sir.

Q. Is there anything that you have heard in the courtroom which has caused you to form an impression or an opinion?

A. No, sir.

Q. Did I cover with you whether or not you knew any of these nine lawyers or anyone in their offices?

A. Yes.

Q. Do you know any member of the bar who tries criminal cases, that defense has been his specialty?

A. No, sir.

Q. Do you know Judge O'Dwyer, the District Attorney of the county, or any member of his staff?

A. No, sir.

Q. In connection with your investigation work do you come in contact with any police officials of the City of New York or any police officers?

A. Yes.

Q. And is that a daily matter?

A. We have made loans to them.

Q. In checking on the credit of others, do you come in contact with the Police Department of the City?

A. Not in checking on the credit of others, in checking on the credit of the policemen themselves.

Q. Are you in sympathy, sir, with the enforcement of the [fol. 1338] penal law of the State?

A. Yes, sir.

Q. Prior to being in this loan business, what was the nature of your work?

A. I was credit manager for an importing concern.

Q. And that was the checking of credits?

A. Yes.

Q. What was the nature of the product?

A. Spanish wines and liquors.

Q. Did you come in contact with any truckers?

A. When we did our delivering. I think he was an independent trucker, however.

Q. In connection with any of the chauffeurs of the truckmen's local, did you tell me some of the chauffeurs were making loans? Did any of them ever mention this case?

A. No, sir.

Q. Something has been said here by one of the lawyers for Buchalter concerning the fact that he has been heretofore convicted of crime and is serving a long jail sentence. I ask you would you have any prejudice against such a defendant?

A. No.

Q. Would you be inclined to relax or deviate from a proper verdict in this murder case because of the fact that he is now presently serving a jail term?

Mr. Climenko: I object to the form of the question.

The Court: Overruled.

Mr. Climenko: Exception.

A. No, I would not.

Q. Assuming that part of the testimony in this case [fol. 1339] comes from an accomplice, and assuming further that there is other evidence in the case which satisfies your mind beyond a reasonable doubt that the accomplice is not only telling the truth about these defendants and their participation in the murder, but you are also satisfied that the other evidence in the case tends to connect the defendants and each one of them with the commission of the murder, would you hesitate to say so by your verdict?

A. Not in the least.

Q. Would you have any fear, hesitation, or embarrassment in so saying by your verdict?

A. No, sir.

Q. Since your name appeared on this jury list, did anybody speak to you about the case?

A. Yes.

Q. Where were those discussions?

A. At home, in my office, and here.

Q. The ones at your home, were they with reference to the merits of the case?

A. No, the merits of the case were not in the discussion at all.

Q. Was the conversation at home limited to prospective jury service?

A. Yes.

Q. You say at your office. Was there any conversation with respect to the name of any defendant?

A. None whatever.

Q. Any conversation here with respect to any of the named defendants?

A. Not but among the jurors, prospective jurors, rather.

Q. Was there any of those conversations that caused you [fol.1340] to form any opinion in the case one way or the other?

A. None whatever.

Q. Will you take the law exclusively from the trial judge in every aspect?

A. Yes.

Q. In the event that you should hear the same arguments urged three times by the counsel for these defendants, will it have three times the effect because of repetition?

A. No, sir.

Q. Is there anything that I have failed to bring out by questioning which affects your qualification to sit as an unbiased and unprejudiced juror?

A. I don't think so.

Q. Is your state of mind such that you can be fair with The People of the State of New York?

A. Yes.

Q. And is your state of mind such that you can be fair with the defendants on trial?

A. I believe so.

- Q. In the event that you have heard all the evidence in the case and you are satisfied from the evidence and you believe beyond a reasonable doubt that these defendants are guilty of murder in the first degree, would you have any reluctance, fear, or embarrassment in so saying in your verdict?

A. None whatever.

By Mr. Talley:

Q. Mr. Cleary, have you read anything about this case or any of the defendants named in this indictment?

A. Yes, sir.

Q. As the result of any reading that you had, have you formed any impression with respect to these defendants?

A. Well, I get an impression from everything I read.

[fol.1341] Q. Did you get any impression that was unfavorable to any of these defendants?

A. None whatever.

Q. So that if you go into the jury box your mind is entirely free as to the question of their innocence or guilt?

A. Yes, sir.

Q. And will remain so until you hear all the evidence in the case; is that correct?

A. Yes, sir.

Q. The Court will charge you that when an indictment is found against any individual, that the burden always remains with the District Attorney to prove the guilt of that defendant or prove the facts set out in the indictment. You understand that?

A. Yes, sir.

Q. And do you understand, and the Court will so charge you, that that burden never shifts from the shoulders of The People right to the end of the case?

A. Yes.

Q. And do you understand that there is no obligation, and the Court will so charge you, on the part of any defendant to take the stand and present his side of the case at all?

A. Yes.

Q. Do you understand that?

A. Yes.

Q. If it should appear desirable on the part of the defense counsel or any of them not to call any of these defendants, relying upon that burden that the law puts upon The People, would you indulge in any unfavorable inference towards the defendant who did not take the stand?

A. No, sir.

Q. Would you require The People to sustain that burden of proving his guilt, rather than expecting him to prove [fol. 1342] his innocence?

A. Yes, sir.

Q. That is quite plain to you, is it not, Mr. Cleary?

A. Yes, sir.

By Mr. Rosenthal:

Q. Mr. Cleary, you have never sat on a criminal case before; is that correct?

A. Never.

Q. And you realize that the defendants on trial here are only being tried for the crime which is charged in the indictment? That is clear to you?

A. Yes, sir.

Q. And that irrespective of what you may have read and which you say has some impression upon your mind, that your duty if you are accepted as a juryman is to confine

yourself to the legal proof that is offered from the mouths of witnesses on the witness stand under oath; is that clear?

A. Yes, sir.

Q. And you feel you are able to do that, I assume from the answers you have given to previous questions.

A. Yes.

Q. Of course, in every criminal case, not only this, you understand that at no time is any defendant called upon to prove his innocence under our law.

A. Yes.

Q. And that it is incumbent upon the people to establish the guilt of the defendant beyond a reasonable doubt in accordance with the instructions with the Court gives as to the law?

A. Yes.

Q. Before a man can be found guilty?

A. Yes.

Q. You understand also, sir, that there are two separate, distinct entities in this court-room in so far as the law is concerned: the Judge, who has every right to tell you the law and from whom you must take the law, and you, the jurymen, who have every right to determine the facts as you see it, taking instruction—

Mr. Turkus: I object to the question.

Mr. Rosenthal: I am asking it.

Mr. Turkus: There is no question; it is just an exposition and a statement.

Mr. Rosenthal: I have not finished the question.

The Court: Finish.

Q. —and you, the jurymen, who have every right to take your own conception of what the facts are as they come from the mouths of witnesses.

Mr. Turkus: Objected to.

Q. Is that clear to you?

Mr. Turkus: Object to it.

The Court: Overruled.

A. Yes.

Q. The Court, of course, will instruct you, as I have just stated to you, the law on every particular branch of this case, if you are accepted as a juror. Is that clear to you?

A. Yes.

Q. You find no fault with the fact that it is the Judge's duty to tell you what the law is so that you may better be [fol. 1344] able to follow the facts? You do not find any fault?

A. None whatever.

Q. Do you promise that you will take the law from the Court, whether it agrees with your idea of what it should be or whether it does not?

A. Yes.

Q. Am I right in that assumption?

A. Yes.

Q. Three defendants are on trial, and they are each represented by different counsel. That is clear to you?

A. Yes.

Q. You understand that with the exception of so much of the law as the Judge may charge you, if it appears in this case that there is a question of conspiracy——

A. Yes.

Q. —that only so much of the evidence as applies to each defendant can be used by you in deliberating the guilt of that particular defendant, is that clear?

A. Yes.

Q. So that your verdict would be three separate verdicts, one as to each defendant; is that clear?

A. Yes.

Q. Mr. Turkus has asked you whether you would be impressed any more by the fact that three men have summed up to you and told you their conception of what the evidence proved. You remember that question, do you not?

A. Yes.

Q. Do you understand, sir, that it is the duty of each lawyer to take care of the interest of the particular client that he represents?

A. Yes.

Q. And that the summation of the particular lawyer, whether it agrees or disagrees or coincides or repeats what [fol. 1345] other lawyers may say, is in behalf of the particular man that he represents; is that clear?

A. Yes.

Q. So that if it is repeated three times by three different lawyers, it would not make it any less impressive to you, would it?

A. No.

Q. Realizing that each one is speaking on behalf of the man that he represents; isn't that true, sir?

A. Yes.

Q. On the question of the testimony, Mr. Turkus has gone at length with you about the question of accomplices, and you have given your views on their testimony.

A. Yes.

Q. Of course, the law will be charged to you by his Honor that any accomplice in any case, the testimony of that particular individual must be scrutinized with great care or caution. That is clear?

A. Yes.

Q. Assuming that the District Attorney were to rely upon the testimony of an individual who claims that one or more of these defendants admitted to him sometime subsequent to the crime that he, the particular defendant, had participated in the crime and the District Attorney tells you that that is what he relies upon as the so-called independent evidence tending to connect the defendant with the crime—that is a complicated question—I do not know whether you follow me.

A. I tried to.

Q. Now then, would you, in passing upon what weight, if any, you would give to that particular testimony, look at [fol. 1346] the background of the individual who recites it from the stand?

A. Yes.

Q. And would you take into consideration that that particular individual, if it so appeared, not only had committed a number of murders for which he has never been punished, but has committed every type of crime, he, that witness, would you take that into consideration in determining what weight, if any, you would give to the testimony of that person?

A. Yes.

Q. What he had to gain, if anything?

A. Yes.

Q. What promises have been made to him, if any?

A. Yes.

Q. If you were to finally determine at the conclusion of the case that other than the testimony of this particular accomplice that he talks about, or accomplices, that there was nothing except this so-called admission, and you did

not believe the person who told you the admission was made to him, and the Court were to charge you that under those circumstances you must acquit, would you have any fear at all of coming in and courageously saying, "I find a verdict for the defendant"? Would you?

A. Not in the least.

Q. Just this other proposition: One of the defendants—and it has not been mentioned—Let me withdraw it and put it this way, so I can be briefer:

Were you present at any time when jurymen were being asked questions by Mr. Turkus respecting an alibi and whether they would take the law from the Court?

A. No, sir.

[fol. 1347] Q. Well, in any event, if an alibi defense is interposed—and I have to interrupt myself again to ask you whether you are acquainted with the term "alibi".

A. Yes.

Q. In other words, it means, in legal phraseology, that the man can prove that he was elsewhere when the alleged crime was supposed to have been committed.

A. Yes.

Q. You understand, sir, or if you are instructed by the Court that even though a defendant is not called upon to prove anything, if he puts an alibi in, that that does not shift the proof and put the burden on him to establish that he was elsewhere? Then you would follow or be guided by the Court's instruction?

A. Yes.

Q. If an alibi—and I want to preamble that with this part—if the Court were to charge you that the offer of proof of an alibi may in itself create a doubt in your mind as to whether this defendant participated in the crime, would you weigh carefully the question of who these people were that testified in behalf of the defendant to where he was on the particular time, in order to see whether in your mind that establishes a doubt as to his guilt. Would you weigh that?

A. Sure.

Q. And if it did establish a doubt in your mind as to the guilt of that particular defendant, would you hesitate to resolve that doubt in his favor?

A. Not in the least.

Q. Is there anything at all, Mr. Cleary—and you are [fol. 1348] best able to answer this—which in your mind

at the present time would preclude you from being fair and impartial, other than what has already been discussed here and that has not been reached here possibly by any question that was addressed to you?

A. Nothing whatever.

Mr. Rosenthal: No challenge for cause.

By Mr. Barshay:

Q. Can the defendant Buchalter entrust to your care and keeping every legal right given to him by law?

A. Absolutely.

Mr. Barshay: No challenge for cause.

Mr. Cuff: No challenge for cause.

By Mr. Turkus:

Q. One question: Did you ever have any business with anybody in 30 Ocean Parkway, Brooklyn?

A. No, sir.

Mr. Turkus: Peremptory.

WILLIAM H. FARRELL, residing at 529 East 22nd Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. 529 East 22nd Street, is that your correct address?

A. That is my address.

Q. Is that known as East Flatbush?

A. No, sir, it is Flatbush proper.

Q. Have you lived in the Flatbush section for a number [fol. 1349] of years?

A. Yes, sir.

Q. You are listed on the trestle board as working as a clerk, without any further description. What kind of work do you do?

A. I am in the buyers' office of the book department of a distributor of magazines.

Q. What is the name of the concern?

A. The American News Company.

Q. Do you work inside, in the office?

A. Yes, sir.

Q. Do you have anything to with the deliveries?

A. No, sir.

Q. And your work is strictly as a clerk?

A. Yes, sir.

Q. Do you come in contact with any of the truckmen's unions or union officials?

A. No, sir.

Q. Or any officials of the trucking union?

A. No, sir.

Q. Have you any connection or any contact in the garment-clothing district in Manhattan?

A. No, sir.

Q. Or anyone engaged in those industries?

A. No, sir.

Q. Have you any connection with anyone on the Brooklyn waterfront?

A. No, sir.

Q. Or in the Brownsville or in the East New York sections of Brooklyn?

A. No, sir.

Q. Have you lived in Brooklyn a number of years?

A. Yes, sir, all my life, thirty-four.

Q. Have you heretofore served as a juror in criminal cases?

A. I was in Judge Fitzgerald's part one time, but the particular case I sat on was thrown out because it proved [fol. 1350] to be not criminal.

Q. Because the defendant was directed a verdict by the Court?

A. Yes.

Q. While you were in the jury panel did you hear the Judge charge the jury on the law with respect to criminal cases?

A. He did not get that far.

Q. Will you, if accepted as a juror, at any rate, implicitly take the law from Judge Taylor?

A. Yes, sir.

Q. In its very aspect?

A. Yes, sir.

Q. Are you in sympathy with the enforcement of the penal law of the State of New York?

A. Yes, sir.

Q. Since you received your jury notice did anybody speak to you about this case?

A. Just simply me having been called for the jury.

Q. You mean those discussions were limited to the possibility of serving as a juror?

A. Yes, sir.

Q. The defendant Buchalter is represented by a former Assistant District Attorney, Hyman Barshay, a former Assistant United States Attorney, Mr. Wegman, and Jesse Climenko—three lawyers—do you know any of them?

A. No, sir.

Q. Do you know anybody in their offices?

A. No, sir.

Q. The defendant Weiss is represented by a former Judge of the Court of General Sessions of New York, Judge Talley; a former Assistant District Attorney in Brooklyn, James I. Cuff; and former Assistant United States Attorney [fol. 1351] Kriendler. Do you know any of those?

A. No, sir.

Q. Or anybody in their offices?

A. No, sir.

Q. The defendant Capone is represented by Mr. Sidney Rosenthal, Mr. Fischbein, and Mr. Rosenberg; do you know any of those?

A. No, sir.

Q. Or anyone connected in their offices?

A. No, sir.

Q. Do you know intimately any member of the bar who specializes in the defense of criminal cases?

A. No, sir.

By the Court.

Q. What is the number on East 22nd Street?

A. 529, between Ditmas and Newkirk.

Q. Is that right near the residence of Mr. Kopff, the former chief Assistant District Attorney?

A. I don't know; I know of his name, but I don't know him.

Q. Judge Fitzgerald is right around the corner, too; Judge Fitzgerald is on Ocean Avenue.

A. Yes, sir.

Q. That is three or four blocks away from you?

A. About four and a half.

Q. Both belong to the same church?

A. No, sir.

By Mr. Turkus:

Q. How long have you been engaged in this line of work?

A. Twelve years.

Q. That has been with the same concern?

A. Yes, sir.

Q. Do you know the District Attorney of the County, Judge O'Dwyer, or any Assistant on his staff?

A. No, sir.

[fol. 1352] Q. If you were charged by the judge, Judge Taylor, that the defendants have the benefit of the presumption of innocence will you follow that instruction of law?

A. Yes, sir.

Q. Will you follow the Judge's instruction on the law of reasonable doubt?

A. Yes, sir.

Q. And upon the law of the burden of proof being upon the prosecutor to establish guilt beyond a reasonable doubt?

A. Yes, sir.

Q. In other words, will you give the defendants on trial, Buchalter, Weiss and Capone, every constitutional right and safeguard the law of the land says the defendants on trial should have?

A. Yes, sir, I will try to.

Q. By the same token, will you apply common sense and understanding to determine the issue of guilt or innocence in this case?

A. Yes, sir.

Q. I take it you understand there will be a certain kind of people brought into court whom you have not met either in your social or business life.

A. Yes, sir.

Q. Will you, in weighing the believability of the individuals who are called, use your common sense and understanding in looking at the issue?

A. Yes, sir.

Q. Is there any bias or prejudice you may have against the prosecution which uses testimony of co-participants against remaining defendants?

A. No, sir.

Q. Do you find any fault with the prosecutor of the [fol. 1353] county, Judge O'Dwyer or any member of his

staff, in using testimony of such a nature in the trial of an indictment?

A. No, sir.

Q. Will you, if selected as a juror, consider every vicious, criminal and immoral act that the accomplice may have committed in his entire life?

A. Yes, sir.

Q. Will you consider that in weighing his believability?

A. Yes, sir.

Q. Will you consider everything that may undermine his testimony or anything that may motivate his testimony when it comes to the point of weighing his believability?

A. Yes, sir.

Q. May I go along with the understanding that you have no inherent prejudice or bias against the use of accomplice testimony as would cause you to reject it, no matter how corroborated?

A. No, sir.

Q. Will you, if accepted as a juror in this case, not only look at everything wrong that there is with the accomplices, but everything that you should view with caution and suspicion, and will you look to see whether he tells the truth about these defendants in connection with the Rosen murder which we are trying?

A. Yes, sir.

Q. Will you look to see if there is any other evidence in the case which not only substantiates the accomplice but also satisfies you, satisfies your mind, that these defendants are implicated and guilty participants in the crime? Will you look at that?

[fol. 1354] Mr. Climenko: I object to the question.

The Court: Objection overruled.

Mr. Climenko: Exception.

A. Yes.

By the Court:

Q. Does the American News Company distribute books and magazines?

A. Yes, sir.

Q. Pictorial magazine books?

A. Yes, sir.

Q. Does it distribute "True Detective Stories"?

A. I am not in that end of it.

Q. Do you represent these periodicals?

A. No, sir, I have nothing to do with them.

Q. What part of the work do you do?

A. I am one of the assistants to the buyer.

Q. The buyer or the publisher?

A. No, sir, we do not publish them; we buy the books from the publishers and we distribute them; we distribute the books.

Q. You buy from the publishers and distribute to stands?

A. No, sir, we distribute to public branches, and they in turn sell to dealers.

Q. That is a big concern?

A. Yes, sir, very large.

Q. Is that the concern which used to be on Park Place?

A. Yes, sir.

Q. Mr. White was in that company then?

A. That was before my time.

[fol. 1355] Q. Do you know who I mean?

A. No.

Q. The American News Company is a very large concern?

A. Yes, sir.

The Court: I know it is a high class concern, highly capitalized, doing an enormous business.

By Mr. Turkus:

Q. I will repeat my last question: If accepted as a juror, will you apply your mental faculties to finding out if Buchalter, Weiss, and Capone are guilty of the murder of Joseph Rosen, murder in the first degree, as charged in the indictment?

A. Yes, sir.

Mr. Climenko: I object to that question.

Q. If accepted as a juror in this case, will you endeavor to do justice in the case?

A. Yes.

Q. One of Mr. Buchalter's lawyers mentioned the fact that his client had been heretofore convicted of a crime and sentenced to a long term in jail. Would that fact cause you to relax your attitude as a juror in this murder trial?

Mr. Climenko: I repeat my other objection. May I in the future have an objection—I do not want to trouble the

Court by repeating the objection—I would like an objection to these particular questions when they are repeated.

The Court: Yes.

A. No, sir.

[fol. 1356] Q. May I proceed, then, with the understanding that as to guilt or innocence in this murder case, your verdict will be based upon the evidence there is in the case as against him and the other defendants?

A. Yes.

Q. Will you listen to reasonable arguments and discussions in the jury room from the other jurors?

A. Yes, sir.

Q. Will you endeavor, by your verdict, to render justice in this case?

A. Yes, sir.

Q. In the event you hear all the testimony in the case, and you have heard from the lawyers in the case as to how they view the case, and you have got the law from the Judge, you talk the case over with your other jurors and then your mind is satisfied beyond a reasonable doubt that there are three guilty men, guilty of murder in the first degree, and those three are Weiss, Capone, and Buchalter, would you hesitate to say so in your verdict? Would you have any fear or reluctance in bringing in such a verdict?

A. No, sir.

By Mr. Barshay:

Q. Did you ever study law?

A. No, sir.

Q. Did any member of your family ever study law?

A. I have a cousin who is a lawyer.

Q. Is that Eddie Farrell?

A. No, sir.

Q. Practicing criminal law?

A. No, sir, never did.

Q. Are you related to Assemblyman Farrell or the leader of Queens County by that name?

A. No, sir.

[fol. 1357] Q. Do you know any policemen?

A. I should say no, although I know various men left our organization and became policemen, but I have not seen them afterwards.

Q. Do you know anybody high in the Police Department?

A. No, sir.

Q. Or anybody in any wise connected with the District Attorney's office?

A. No, sir.

Q. Do you know any of the names Mr. Turkus stated, or asked were they familiar to you?

A. No, sir.

Q. The names of Belia or Tosca or Weinstein?

A. No, sir.

Q. Did you read about the case after the alleged homicide occurred, sometime back in 1936?

A. I don't recall whether I read it then or at the time of the indictment.

Q. You may have?

A. I know I read about it at the time of the indictment, at least I believe it was then.

Q. Have you formed an impression by reason of reading the newspaper?

A. I have.

Q. Is that impression prejudicial to the defendants?

A. It has been, yes, sir.

Q. Is it now?

A. Yes, sir.

Q. Is it an impression that would require evidence to remove?

A. I am afraid so.

Q. Realizing full well it may not be necessary from a legal standpoint—while you appreciate the law as you have heard it expressed so many times, you are of the frank [fol. 1358] opinion that you may not be able to dissipate that unfavorable impression which you now have?

A. I am afraid not.

Q. It may require some evidence to remove that unfavorable impression?

A. I should say yes.

Mr. Barshay: I challenge for cause, on behalf of the defense.

(The talesman was then sworn.)

By Mr. Barshay:

Q. Under oath would you give the same answers to the questions I just propounded to you?

A. I will.

By Mr. Rosenthal:

Q. That is a fixed impression at this time which would take evidence to remove?

A. Yes, sir.

Mr. Rosenthal: Defense press the challenge.

Mr. Cuff: We join in the challenge, in behalf of the defendant Weiss.

By Mr. Turkus:

Q. I believe that the only experience you had was sitting in the jury box and not having the case submitted.

A. Yes, sir. Oh, no, I have had experience prior to that in the Supreme Court. I thought you meant in the County Court.

Q. I mean in criminal cases.

A. In criminal cases, yes.

Q. Well, now, what I want to know here is this: Was the impression that you have gathered from the reading of some articles in the newspaper?

A. Yes, sir.

[fol. 1359] Q. Is that the only knowledge you had, what you read?

A. Well, that would be sufficient. I was interested in it at the time.

Q. Is it the kind of an impression you can lay aside?

A. It would be difficult. I will say no.

The Court: Challenge sustained.

CHARLES A. MURPHY, No. 2796, residing at 1005 East 35th Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. You live in the Kings Highway section?

A. I live near the corner of Avenue I and Flatbush.

Q. I take it that is commonly called Flatbush?

A. Yes, sir.

Q. You are living in Brooklyn how long?

A. Over twenty years.

Q. Have you lived in this particular section for a number of years?

A. About the same number.

Q. I see you are listed on the trestle board as an accountant without any further description.

A. Yes, sir.

Q. Are you in the practice of your profession for yourself or with a firm?

A. I am connected with a company that deals in securities and also with oil companies.

Q. Does your business bring you in contact with people in the garment district?

A. No, sir.

[fol. 1359a] Q. Or the clothing industry, or the Brooklyn waterfront, or the Brownsville or the East New York sections of Brooklyn?

A. No, sir.

Q. You have no such connection?

A. No, sir.

Q. You have heard the nature of the charge in this case?

A. Yes, sir.

Q. Is there anything about the nature of the charge, namely, the charge of murder in the first degree, which would prevent you from deciding the case on the merits?

A. No, sir.

Q. You have no scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. If accepted as a juror, decide the question of guilt or innocence without any question as to punishment?

A. Yes, sir.

Q. Would you be inclined to relax your duty as a juror in this specific murder charge because one defendant has been sentenced to a long term in jail for another crime?

A. No, sir.

Q. Do you know any of the nine lawyers who have the background I indicated in the other question?

A. I do not.

Q. Do you know anybody connected with their law offices?

A. No, sir.

Q. Do you know the present District Attorney of the County, Judge O'Dwyer?

A. I do not.

Q. Or any Assistant District Attorney on his staff?

A. No, sir.

Q. Have you had prior jury service?

A. No, sir.

Q. Will you take the law in this case exclusively from [fol. 1360] Judge Taylor?

A. I will.

Q. And as to the testimony of an accomplice, have you any bias or prejudice against the use of accomplice or co-participant testimony in the trial of the indictment?

A. I would take the law, as I said, from the judge.

Q. One of the things to consider about an accomplice is his past background, the crimes he has committed, the vicious criminal acts he may have done,—will you consider every one of them in passing on his credibility?

A. Very much so.

Q. Will you use caution, common sense, and understanding in weighing the testimony?

A. Yes, sir.

Q. Have you any impression or any preconceived idea about accomplice testimony as would cause you to reject it, no matter how corroborated?

A. No, sir, except that it would have to be conclusive. The corroboration would have to be pretty conclusive.

Q. Will you, in the event the Judge were to tell you that corroboration does not have to go to every detail of an accomplice's testimony, but it may be deemed sufficient by the jury if it tends to connect the defendants with the commission of the crime—would you follow that instruction of law?

A. You mean "tend to connect", or "could connect"? If that is the law, I will be governed by the law.

Q. That is the law. I take it you had a different version of what the law was.

[fol. 1361] A. I did not know what the law was, but when you say "tend to connect," I did not think that might be strong enough. I thought it would have to be "absolutely connect it."

Q. The definition of law which the Judge will give you will be "that which tends to connect."

A. Then I will be governed by the law.

Q. Have you any notions as to accomplice testimony that would make it difficult for you to follow instructions on the law?

Mr. Cuff: I object to that.

The Court: Objection overruled.

Mr. Cuff: Exception.

A. No, sir.

Q. If accepted as a juror in this case will you apply your faculties to the determination of whether the accomplice was telling the truth about these defendants?

A. Yes, I would.

Q. And if you are satisfied that there is evidence in the case that not only shows that the accomplice is telling the truth about these defendants, but there is independent evidence which tends to connect the defendants with the commission of the crime, and you are satisfied as to that beyond a reasonable doubt, would you hesitate to say so in your verdict?

A. I would not.

Q. Will you listen to a fair argument and discussion by the other jurors?

A. Yes, sir.

[fol. 1362] Q. If selected as a juror in the case, and The People of the State of New York satisfy you by evidence that the accomplice who said that these defendants were implicated in the commission of the crime with him satisfies you that he was not only telling the truth but you find there is other evidence in the case from other sources which tends to connect these defendants with the commission of the crime, and you believe that beyond a reasonable doubt, would you hesitate, would you be fearful, would you be reluctant in so stating?

Mr. Cuff: I object to that as already answered.

The Court: Objection sustained.

By the Court:

Q. Would you have any fear about it?

A. No, sir.

Q. No hesitation?

A. No hesitation.

Q. Not afraid of any talk?

A. No, sir.

By Mr. Talley:

Q. Did you read anything about this case prior to today?

A. I don't recall having read any article at any time on the merits of the case.

Q. Did you read anything about any of the defendants?

A. No, sir.

Q. Did you discuss the case with anybody?

A. No, sir, except possibly the mere fact that I might be called as a juror, maybe an explanation as to why I could not be here or there.

Q. You did not go into any discussion of the case itself [fol. 1363] as to the defendants?

A. No, sir.

Q. The Court will charge you that the burden of proving the guilt of any defendant named in any indictment always rests with the prosecution.

A. Yes, sir.

Q. And never shifts from the prosecution to the shoulders of the defendant.

A. Yes, sir.

Q. If the Court charges you that is the law, you will take that implicitly?

A. Yes, sir.

Q. And the Court will charge you that at no time in the case is it incumbent upon the defendant to take the stand and give any testimony or any explanation whatsoever. Further than that, if the defendant does not take the stand you must not indulge in any unfavorable inference against him or towards him because of the fact he has not testified in his own behalf. If the Court so charges, will you follow that instruction?

A. Yes, sir.

Q. And you will not indulge in any unfavorable inference against the defendant?

A. I did not catch that question.

Q. If the Court charges you that you are not to indulge in any unfavorable inference toward the defendant who does not take the stand, will you follow that direction of the Court?

A. Yes, sir.

Q. It is also our law that the guilt of a defendant charged with crime must be proven beyond a reasonable doubt. That rule is different from the law obtaining in the civil court, [fol. 1364] where the rule is simply that a case need be proved by a preponderance of evidence in favor of one side or the other, and that such side is entitled to a verdict. But in the criminal law it is different. The law is jealous of the rights of a defendant, so that guilt must be proven beyond

a reasonable doubt. If you are so charged, as you will be, and you have any reasonable doubt after hearing all of the testimony, as to the guilt of these defendants, would you give the defendants the benefit of such a doubt?

A. I would.

Q. You say you have not read anything about the case. Have you formed any impression from any other source, conversation or otherwise?

A. No, sir.

Q. As to the guilt or innocence of any of these defendants?

A. No, sir; that was not the question under consideration at all.

Q. Would you approach this case, if selected as a juror, with an entirely fair and impartial mind and without any nature of an impression about the defendants or any of them, or the nature or the character of the crime?

A. That is right.

By Mr. Climenko:

Q. Have you ever served on a jury before?

A. Never before.

Q. Never at any time, in any type of case?

A. Never before in any type.

Q. In spite of the fact you have had no such experience, you will accept that law in the case which is applicable and [fol. 1365] which is given to the members of the jury by the Judge, Judge Taylor?

A. Yes, sir.

Q. Your mind is clear that you are ready to accept the principles of law which may be applied from Judge Taylor as he announces them?

A. Yes.

Q. That is his function in this court-room?

A. Yes, sir.

Q. Which he shares with nobody; you understand that?

A. Yes, sir.

Q. On the other hand, you also understand, I take it, even though you have never served as a juror before, that the question of deciding what the facts are—

A. (Interrupting): Will you please repeat that?

Q. You also understand that the duty of deciding as to what the facts are is a duty for the jury?

A. Yes, sir.

Q. The jury listens to people who take the stand and makes up its mind as to who is telling the truth and who is not telling the truth?

A. Yes, sir.

Q. You also understand that that is a duty or a function or a job which nobody can share with the jury?

A. Right.

Q. You also understand, I think, that although each member of the jury is under a duty to enter into discussion, reasonable discussion, with every other member of the jury, and should arrive at an agreement if it is possible, nevertheless, if any particular member of the jury does not find that his mind is responsive to the argument of others, it is his duty [fol. 1366] to adhere to his own opinion—you understand that?

A. Yes, sir.

Q. In other words, you understand that it is an obligation under the oath of each juror to adhere to his own finding?

A. Yes, sir.

Q. Unless by the processes of reasoning he is persuaded he is wrong. So, were you to accept the oath as a juror, I assume you are confident you have the capacity to adhere to your oath in that respect?

A. Yes, sir.

Q. You do not have any mental reservations about your ability to stand up for what you think is right, even though you might be in the minority?

A. That is correct.

Q. Something has been said about the use of accomplices. I suppose you realize, in deciding who is telling the truth and who is not telling the truth, you have to pass upon the believability of each witness who takes the stand?

A. Yes.

Q. Now, you would not be prejudiced in favor of a particular witness or prejudiced against him simply because he was a witness called by Mr. Turkus?

A. No, sir.

Q. The mere fact that a witness was called by Mr. Turkus, an Assistant District Attorney, would not in your mind make you think that as a result of that fact he was telling you the truth?

A. Oh, no.

Q. He is subject to all of the tests as to credibility?

A. Yes, sir.

Q. Supposing that the so-called accomplice witness takes [fol. 1367] the stand and admits that he has in the past committed perjury—you know what perjury is?

A. Yes, sir.

Q. Would you take that fact into consideration in passing on the reliability of that man's testimony?

A. I would.

Q. In other words, you realize that such a person who says he is an accomplice swears to tell the truth and admits in other cases that he took that oath and deliberately repudiated everything, in spite of the fact that he was then under oath, that you would have to weigh those circumstances in deciding whether or not in this particular situation he was telling the truth?

A. Yes, sir.

Mr. Turkus: I object, as already answered.

The Court: That is what he said. Sustained.

Q. Supposing that the so-called corroboration that Mr. Turkus produces here is in the form of a witness who says that a defendant admitted to him that on some occasion he had something to do with the case.

A. Yes, sir.

Q. Assuming that that witness should state that such an admission was made to him, and admit that he, the witness, has in his turn in the past been guilty of perjury, would you take that situation into consideration in passing on the credibility of that so-called corroborative witness?

A. I would take all the facts into consideration.

Q. But, in taking all the facts into consideration, what I am trying to get at is would you take into consideration the [fol. 1368] fact that the man who asks you to take his word for it today, because he has taken an oath to tell the truth, has on previous occasions taken that oath and deliberately falsified?

A. I would take that into consideration.

Q. In taking into consideration those facts, would you also take into consideration the fact that the witness may have a motive, as to whether or not what he is saying is the truth?

A. Yes.

Q. In other words, if the witness is in the position where his fate, because of his admission of the commission of other crimes, is in the hands of the prosecution, and he is depend-

ent upon the prosecution's good will in the future with respect to the disposition of his fate, would you take that into consideration in deciding whether or not he has told the truth?

Mr. Turkus: I object to that as already gone into.

The Court: The man's attitude, I think, is sufficiently plain. You cannot pin him down as to how he would decide a specific point of evidence.

Mr. Climenko: I have no such purpose at all. I am not trying to pin him down to anything. I am bringing to his mind the possibility of a situation.

Mr. Turkus: The prospective juror already said he would take everything into consideration.

The Court:

[fol. 1369] Q. Would you use care to satisfy yourself as to whether or not the man was telling the truth?

A. I have already said that.

By Mr. Climenko:

Q. In deciding whether or not a man would take the stand as a witness in this case and is telling the truth, you would exercise all of the same precautionary use of your mind that you would exercise where you are dealing with a matter of facts in your own interest?

A. I would.

By the Court:

Q. By the way, what line are you in?

A. Accounting.

Q. What line?

A. No particular line.

Q. Where is your office?

A. 347 Madison Avenue.

Q. What is the name of the firm?

A. May, Kern & Murray.

By Mr. Climenko:

Q. Would you regard the job or duty under your oath of learning what the truth is as to all matters of importance equal with any transaction affecting your own welfare?

Mr. Turkus: I object to that. We have been all over that situation. It has already been answered.

The Court: Objection sustained.

Mr. Climenko: Exception.

Q. In deciding upon the credibility of the so-called accomplice, suppose the so-called accomplice admits he never at any time had ever seen or talked with a particular defendant, would you take that into consideration in determining whether or not the accomplice, so-called, was telling the truth?

A. I would take that into consideration.

Q. Now, were you to be sworn as a juror in this case you would realize, I take it, that the mere fact that the defendants have been indicted is not to be construed by you as any indication in any sense of guilt on their part?

Mr. Turkus: I object to that; that is a legal question.

The Court: Sustained as a question of law.

Q. Supposing the Court should charge you, as a matter of law, that the mere fact that an indictment has been filed is not proof in any sense or to any degree of guilt against the defendant, would you have any hesitation or experience any difficulty in following the instructions of the law?

A. I would not.

Q. And that question, assuming that those instructions were given you, would give you some intimation of what that meant, when I say the defendant is presumed to be innocent?

A. Yes, sir.

Q. And in starting your duty as a juror you would listen to evidence throughout the trial of the case with knowledge of the Court's instruction that the defendants are presumed to be innocent?

Mr. Turkus: Objected to as repetitions.

The Court: Objection sustained.

[fol. 1371] Mr. Climenko: Exception.

Q. You realize, of course, that an innocent man may be indicted?

A. Oh, yes.

Q. For a crime of which he is innocent?

A. Yes, sir.

By the Court:

Q. Is the accounting business you have with the garment trade?

A. No, sir, no connection.

By Mr. Climenko:

Q. The mere fact we are on the eve of a political campaign would not affect your thinking about this case one way or the other?

A. No, sir.

Q. It has nothing to do with the case?

A. No, sir.

Q. Is there any factor in your experience personally affecting your thinking that has not been referred to by questions of any of the lawyers, which in any way creates a mental reservation about your ability to deal impartially with the trial of this case?

A. No, sir.

Q. So as you sit here now you are confident of your own ability to listen to the evidence impartially?

A. Yes, sir.

Mr. Turkus: Objected to as already answered.

The Court: He has answered.

Q. You are also convinced of your ability, in the event you entertain a reasonable doubt as to the guilt of the defendants or any one of them at the conclusion of the case, to return a verdict of not guilt?

[fol. 1372] The Court:

Q. If you had a reasonable doubt you would acquit?

A. Absolutely.

Q. You would not have any hesitation?

A. No, sir.

By Mr. Rosenthal:

Q. I could not quite hear you from where I was seated, but I understand you are an accountant.

A. Yes, sir.

Q. And I heard you were at 247 Madison Avenue.

A. Yes, sir.

Q. A great many of these questions, you understand, have been repeated, so I will put them in brief form, and if you do not understand them I will enlarge upon them. Did you hear my explanation about the fact that each one of these defendants are entitled to a separate trial?

A. I did.

Q. You have no quarrel or fight with the law which entitles each one of these men to be represented by a separate counsel and for a separate trial at your hands?

A. No, sir.

Q. You heard also the statement, in so far as your duty as a jurymen, as you enter the jury room, only to utilize such evidence against each particular defendant as the testimony of the witness may, in accordance with the instructions of the Court, be applicable to that defendant. Is that clear?

A. The question is involved.

Q. Here is what I mean: The Judge will charge you on the questions of law.

A. Yes, sir.

Q. You will also be charged as to each one of these men having the testimony weighed against them in so far as it [fol. 1373] affects them.

A. Yes.

Q. As an illustration of what I mean and to clarify the situation, if A got on the stand and only spoke about my defendant, and there was no connection of any character with the others, and the Judge were to charge you that under the law that statement could only be used against my defendant and could not be used against the other two, when you argued in your jury room you would only be permitted to use it against one; would you follow that instruction?

A. Yes, sir, three separate trials.

Q. On the question of accomplice testimony, the Court will charge you the law that every accomplice in any case—the testimony of every accomplice, I should say—must be scrutinized with great care and caution and suspicion before it can be accepted by you as the truth. If the Court were to charge you that, from the answers which you have given both to Mr. Turkus and the others, you would have no fault to find with that proposition of law?

A. No, sir.

Q. And the Court will further charge you that you must even go further, because even though you were to believe all the testimony of the accomplice, you could not convict a man unless there was other believable testimony tending to connect him with the crime. Now, do you understand that in so far as the defendants are concerned, the question

of whether Rosen died by a gun or not is not disputed, you understand that?

[fol. 1374] A. I don't understand that; I know nothing about the case.

Q. You understand, however, that defendants deny any participation by their plea of not guilty, in this particular crime?

Mr. Turkus: I object to that as a legal question.

The Court:

Q. They pleaded Not Guilty, that is the reason they are being tried.

A. Yes, sir.

Q. That sets up all the questions at issue as to the crime itself and the participation of any one of these defendants in it?

A. Yes, sir.

Q. Now then, assuming that the District Attorney says to you in the form of proof that he expects to show these defendants' guilt—that is, with so-called independent evidence consisting of alleged oral statements made by one or more of the defendants to one or more of The People's witness, in which they, the defendants, said to that witness, "I participated in this crime. Do you promise that you will ferret the source from which that statement comes, in other words, ascertain, "Who is it that says this defendant made that statement? What motive, if any, has he got for saying that the defendant made this statement? Has he committed numerous crimes? Has he been punished for them? Is there any other motive that might arise to make him make such a statement on the stand?" Would you do that?

A. Yes, sir.

Q. Simply because a defendant is a defendant, is your state of mind such that if he took the stand and swore to tell [fol. 1375] the truth, that merely because he is charged with the crime you would disbelieve him? I want to make that clear: Simply because a defendant is charged with crime, if he went on the stand and raised his hand and swore to tell the truth, and told you a story, would you, merely because of the fact that he was a defendant, disbelieve him?

A. No, sir.

Q. In other words, you would, like with any other witness, search for what interest or motive he may have in making

the statement, and if, after searching in your own mind the interest or motive, his manner on the stand, his way of answering the questions, you decide that he is telling the truth, you would give his testimony the consideration which it deserves at your hands?

A. Yes, sir.

Q. Merely because the defendant may say on the stand, "I know some of The People's witnesses," that mere fact alone, without corroborating proof that the defendant participated in the crime, would that prejudice you against any defendant—the mere fact he knew one of the witnesses, the mere fact that he knew or was acquainted, the mere fact that he was acquainted with any witness for The People—would that fact standing alone—

A. (Interrupting.) Will you repeat that question, please?

Q. Would the mere fact that one of the defendants knew some of the witnesses that The People used, standing alone, prejudice you against that defendant?

[fol. 1376] A. I don't get the import of that question.

Q. I will try to make it as clear as I can. Assuming that John Jones were to take the stand as a witness for The People and say, "I know"—I will use the name of my own client, the man I represent is Capone, and he should say that "I know Capone and I have been in his company at times," would the mere fact that he knew Capone prejudice you against Capone?

A. No, sir.

Q. Assuming that Capone, the defendant, took the stand and said, "I know one or more of the witnesses for The People, but I deny I had anything to do with this or any other crime," would that fact, the fact he admits knowing them, standing alone, prejudice you against him?

A. No, sir.

Q. I suppose you have heard me explain the question of alibi when I addressed one of the jurymen only a few minutes ago?

A. Yes, sir.

Q. Would the mere fact that a man offered an alibi showing that he was absent and had nothing to do with this crime, in your mind, if the Court charges you that at no time does the burden shift from the People to the defense, would the mere fact that he offers proof on his behalf raise in your mind the idea that he, the defendant, has undertaken the burden of proof?

Mr. Turkus: I object to that as a legal question.

Mr. Rosenthal: I will withdraw it.

Q. You have heard repeatedly said, since you have been [fol. 1377] here, that at no time does the burden of proof shift over to the side of the defendants?

A. Yes, sir.

Q. At all times it remains on the side of The People to prove guilt beyond a reasonable doubt?

A. Right.

Q. Now then, the mere fact that the defendant does go ahead, even though he does not have to, and offers proof to you of his innocence, would that in your mind create an opinion that the burden has shifted to him?

A. No, sir.

Q. However, if you are charged by the Court that once the defendant offers proof of an alibi, if that alibi proof raises a doubt in your mind as to his guilt of the crime, that doubt, like any other doubt, that reasonable doubt, I should say, like any other reasonable doubt, must be resolved in favor of the defendant and you must acquit?

A. I understand.

Q. And if you had a reasonable doubt created by this evidence, would you hesitate to acquit him?

A. Absolutely not, no, sir.

Q. You understand that one accomplice cannot corroborate another accomplice? Were you present at the time that I had a lengthy discussion of that question with two different types of accomplices, one where the Judge tells you, "Mr. Murphy, I charge you as a matter of law that this man is an accomplice," and then the other, where the Judge says to you, "I do not charge you as a matter of law, but you, Mr. Murphy, as a jurymen"—not in my words, [fol. 1378] but in the Judge's words—"You, Mr. Murphy, as a jurymen, must determine from what you heard of the evidence whether actually he is an accomplice"—were you present when I explained that?

A. I think I was.

Q. You realize, then, that if the Court were to charge you that a man is an accomplice as a matter of law, you could not find any fault with that proposition, you must in the jury room decide his evidence according to the Court's instructions?

A. Yes, sir.

Q. Now, if the Court were to charge you that you, as a jurymen, have a right to determine whether another witness was an accomplice as a fact—Is that clear?

A. Yes.

Q. In other words, I want to make sure you understand.

A. I think I understand what you mean: One is a case where the Judge instructs you you must consider him as an accomplice; in other words, he gives you an opportunity to determine from the facts in your own mind whether he is an accomplice.

The Court: According to the evidence.

The Witness: That is right.

Q. Once having been given that option, if from the evidence you as a jurymen are convinced he is an accomplice, would you hesitate to apply the same test which the Court tells you you must apply to an accomplice whom he charges you is an accomplice?

A. I would.

Q. I take it that you have not read any newspaper articles concerning this case?

[fol. 1379] A. Not as I recall. In fact, I did not read any newspaper articles on these items.

Q. The mere fact that the District Attorney asks you whether or not you have any objection to the crime being solved by somebody breaking it from the inside, does not convey to your mind now that this particular crime has been solved?

A. Oh, no.

Q. You know that that is your province, to determine whether it has or it has not been, and whether certain people have told them something which they leave to you to believe or not?

A. Yes, sir.

Q. Assuming further that in the course of this trial certain questions are asked of certain witnesses regarding "Didn't you do this and didn't you do that?" and the Judge were to charge you that the only time you can use that as a fact that they did or did not do certain things is when they, the witnesses, admit from their own mouths, because that would be proof of another crime? Simply because the District Attorney were to ask a particular witness, "Did you do this?" and he says, "No," that would not raise in your mind the thought that the act which he is asking about actually was committed?

Mr. Turkus: That is a question of law.

The Court: I lost that question.

Mr. Rosenthal: I will repeat it.

By the Court:

Q. Is your father in Wall Street?

A. My father is dead thirty-odd years.

[fol. 1380] Mr. Rosenthal:

Q. I will repeat it in a simple way: Assuming the Judge tells you that the law in this as in any other case is that you can only prove a particular crime either by witnesses who commit it or by admissions of an individual when he is on the witness stand. Merely because the District Attorney may say to a man who is on the stand, whether he be a defendant or whoever he may be, "Q. On such-and-such a day, at such-and-such a place, in the City of New York, or in the Borough of Manhattan, didn't you, in company with So-and-so and So-and so, commit a certain act?"—simply because he makes that statement in the form of a question, if the answer is in the negative, would you be prejudiced against the particular individual he asked the question of?

Mr. Turkus: I object to the question as hypothetical.

The Court: The law does not contemplate any such fineness in the examination of a talesman. Objection sustained.

Mr. Rosenthal: Exception.

Q. Have you any close relations on the Police Force?

A. No, sir.

Q. Or any close friends who are high police officials?

A. I happen to know just one patrolman. I have not seen him in a year.

Q. You have no association with the present District [fol. 1381] Attorney's staff?

A. No, sir.

Q. You have never served on a jury?

A. Never.

Q. You realize that, irrespective of the fact of whether you served or did not serve, you are entitled to your own opinion as it is formed on the evidence?

A. Yes, sir.

Q. You also realize that you are supposed to argue and reason with the other jurymen as to the opinion which you

form, but that if, after reasoning with the other jurymen, you still retain your opinion, it is your duty to remain that way?

A. Yes, sir.

Q. And you will do that?

A. Yes, sir.

Q. Merely because of your own inexperience or for no other reason, you would not change your opinion, having formed it?

A. No.

Q. There is no outside consideration—by that, I mean the time element or the business element or things of that character—which would in any way make you change your opinion if you formed it on your conscience?

A. No, sir.

Q. Would you have any hesitation, if you were not convinced for the evidence of the guilt of any one of these defendants, to make that fact known by a verdict of Not Guilty?

A. I would not have any hesitation.

Q. Would you have any fear or reluctance—I think those are the words the District Attorney used?

A. No, sir, no reluctance.

[fol. 1382] Mr. Rosenthal: No challenge for cause.

Mr. Turkus: The talesman is satisfactory to the People of the State.

Mr. Barshay: Satisfactory.

The Court: I take it that means that all three defendants agree?

Mr. Rosenthal: May we make it clear—If you do not hear any negative, it means it is all affirmative.

The Court: I so understood, but I want the record to be clear.

Mr. Rosenthal: It is on the record that if there is no negative and we are satisfied, it means all of us have agreed.

(Talesman seated as Tentative Juror No. 3.)

LEO ROSS, No. 2586, residing at 1136-A Sterling Place, Brooklyn, New York, examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. You are listed as living at 1136-A Sterling Place?

A. Yes.

Q. What district or section is that in?

A. The Kingston Avenue section.

Q. Are you close to Eastern Parkway?

A. Yes, sir.

Q. Is that where the Famous Restaurant is?

[fol. 1383] A. That is about three blocks away.

By the Court:

Q. You are one block from Eastern Parkway?

A. Lincoln, St. Johns, and the Parkway.

By Mr. Turkus:

Q. Have you lived there for a number of years?

A. Yes, sir.

Q. Would it be more than five?

A. I live in that section about three years.

Q. Prior to that where did you live?

A. Franklin Avenue, and Carroll Street.

Q. Is that called the Crown Heights section?

A. Yes, sir.

The Court:

Q. You are a neighbor of Congressman Somers?

A. I don't know.

Q. Your vocation is that of credit man on this trestle board; is that correct?

A. Yes.

Q. By whom are you employed?

A. Bulova Watch Company.

Q. How long have you been with the Bulova Watch Company?

A. Five years.

Q. Is that your present job, checking credits on the outside?

A. No, sir, inside.

Q. Do you check the credits of retail jewelers?

A. Yes, sir.

Q. You have been doing that type of work for the past five years?

A. Yes, sir.

Q. Does your work require the use of accounting knowledge?

A. Yes, sir.

[fol. 1384] Q. Did you take any course in accounting?

A. I have.

Q. Was that in one of the universities?

A. The New York University.

Q. Did you secure a degree?

A. No, sir.

Q. Did you or didn't you qualify for a number of years?

A. Five years.

Q. Are you related to any lawyer named Ross?

A. No, sir.

Q. Any immediate member of your family who is a member of the bar?

A. No, sir.

Q. Has business in the past, or have you had any social contact with any individual employed in the garment or clothing trade?

A. No, sir, not at all.

Q. That has been at no time in your career?

A. No, sir.

Q. Do you know anyone socially who is connected with the clothing or garment industry?

A. I have a friend who is in the ladies' millinery business in that section whom I meet; I see him very infrequently.

Q. Is Mr. Barnet president of the concern you are with?

A. Yes, sir.

Q. Does your work bring you in close proximity with him?

A. We see each other.

Q. Do you know the name of the lawyer for the corporation?

A. Yes, sir.

Q. Do you come in close contact with him?

A. No, sir, we know each other but we have no connection.

[fol. 1385] Q. Is the lawyer Mr. Geoghan?

A. No.

Q. Do you mind telling me the name of the lawyer?

A. Cohen.

Q. Have you had any contact, social or otherwise, with any person in the Brownsville or East New York area of Brooklyn?

A. I do.

Q. Is that frequent contact?

A. Yes, sir.

Q. Is it a social contact with somebody who lives there?

A. Yes, sir.

Q. A relative?

A. Yes, sir, a relative.

Q. Do you know the street on which this relative lives?

A. Yes, sir, Howard Avenue.

Q. Do you know the cross street?

A. Sutter.

Q. Do you know how far that is from Sutter and Bradford?

A. I don't know the name of the street.

Q. Or 725 Sutter?

A. It is within four blocks.

Q. Have you been going in the area of Brownsville on more or less frequent occasions for the past five years?

A. Yes, sir.

Q. At the time of the killing of Rosen, at the time that took place, did you read anything about it?

A. I did; I most likely did; I don't recall.

Q. Did you have any discussion with anybody in Brownsville area about the matter?

A. No, sir, I do not recall.

Q. Did you hear anything discussed about the Rosen killing?

A. No.

Q. Is it a very near relative you have there in that [fol. 1386] section?

A. The whole family; I have a sister there and her family.

Q. Since the investigation of Judge O'Dwyer have you heard any discussions in reference to matters in the Brownsville and East New York area?

A. No, sir.

Q. Did you ever personally reside in that district?

A. No, sir.

Q. Have you read any of the newspaper accounts of the O'Dwyer investigation?

A. Very lately I have not paid much attention to them.

Q. In anything you may have heard or read, did you ever hear the name of Harry Strauss, alias Pittsburgh Phil?

A. No, sir.

Q. Or that of Harry Maione, alias Happy Maione?

A. I don't recall.

Q. Or Frank (The Dasher) Abbando?

A. No, sir.

Q. Or Martin (Buggsy) Goldstein?

A. I don't recall that.

Q. Did you have any contact of any kind, nature, or description in the Brooklyn waterfront?

A. No, sir.

Q. Do you know any official of the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Is there any familiarity with the name of Weinstein or Katz?

A. No, sir.

Q. Or with the name of Bruno Belia, or Salvatore Marazzello?

A. No, sir.

Q. Or any of the names I have inquired about from [fol. 1387] other names I have inquired about from other prospective jurors—was there any familiarity with any of them so far as you are concerned?

A. None whatever.

Q. Did your business bring you in contact with any clothing truckers?

A. No, sir.

Q. Or, socially, do you know anyone engaged in the clothing trucking industry?

A. No, sir.

Q. Does your business bring you in contact with any union representatives or officials of any kind?

A. No, sir.

Q. Are you in sympathy with the enforcement of the Penal Law of this State?

A. I am.

[fol. 1388] Q. Since you received your notice to serve here, did anybody speak to you about this case?

A. Outside of my relatives in Brownsville and my family.

Q. With respect to the conversation you had with relatives in Brownsville, was that with regard to any specific defendant in the case?

A. Not to me, no, sir.

Q. Was it in regard to the O'Dwyer investigation?

A. No, sir.

Q. Was it connected with the merits of the case?

A. Yes, sir.

Q. Was it the expression of opinion by relatives?

A. No, sir, there was no general expression.

Q. In any discussion you had with relatives was anybody or any individual's name mentioned?

A. None whatever.

Q. Was your conversation limited to the prospect of serving on the jury, or did it have anything to do with the case?

A. In connection with whether they knew Rosen and whether they had heard anything about it. One of them knew him as a customer.

Q. Did I understand you to say one of them knew Mr. Rosen as a customer?

A. Yes, sir.

Q. Is this relative of yours in business in Brownsville?

A. No, sir.

Q. Where is this particular relative in business?

A. In Bay Ridge, in Brooklyn.

[fol. 1389] Q. What is his line?

A. Grocery.

Q. Was this relative at that time engaged in business in Brownsville or East New York?

A. Never.

Q. Is the relationship close between you and this person?

A. Yes, sir, it is.

Q. A brother-in-law?

A. A brother-in-law.

Q. There was some discussion you had with your brother-in-law about the victim named in the indictment, the victim of the homicide, having been a customer of the brother-in-law?

A. That is right.

Q. Was there any discussion about how this man met his death?

A. No, sir, not at all.

Q. Was it limited, that talk, simply to the fact that the victim had been a customer?

A. That is the whole thing.

Q. As you are sitting in the box now, is there any impression or opinion that you may have gathered from anything you heard in the Brownsville or East New York area, or anything you may have read, which, goes to the merits of the case?

A. Just my general reading in connection with the case, that is all.

Q. Does that go to the merits of the case, any opinion you may have?

A. Yes, sir, it does.

Q. Does that opinion go to the guilt or innocence?

A. It does.

Q. Is that the kind of an opinion that would require [fol. 1390] evidence to remove?

A. Yes, sir, I would.

Q. Would you require evidence from the defendants to remove the opinion?

A. Yes, sir, it would.

Mr. Turkus: I have no other recourse but to challenge him.

The Court: Try the challenge.

(LEO ROSS, the talesman questioned, was then sworn.)

By Mr. Turkus:

Q. Before you were sworn you made certain responses to questions I put to you.

A. Yes, sir.

Q. Were those answers truthful responses?

A. Yes, sir.

Q. If I were to repeat the questions to you repeat and reiterate the answers?

A. Yes, sir.

Q. Would those answers be true?

A. Yes, sir, they would.

Mr. Barshay: We have no questions, your Honor.

The Court: Challenge sustained.

CELIA R. SCHWARTZ, No. 2596, residing at 283 East 46th Street, Brooklyn, New York, a prospective juror.)

Mr. Barshay: May we all agree to excuse this talesman?

The Court: The only reason the Court can consider that

is on the problem of the jury being locked up during the trial. It would be necessary to have women attendants, which the court at the present time is unprovided with. [fol. 1391] We have only one matron, a woman attendant, in the whole court. On that ground, and that alone, and not having any bearing on the question of qualifications, the Court will allow counsel to agree.

Mr. Barshay: We all agree.

Mr. Turkus: The People agree.

(Talesman excused.)

JOHN J. ROSE, No. 2597, residing at 246 East 32nd Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. You are listed as residing at 246 East 32nd Street.

A. Yes, sir.

Q. Is that in the Flatbush district?

A. Yes, sir.

Q. Is that somewhere near Church Avenue and East 32nd Street?

A. It is out a little further, near Beverly Road.

Q. Have you lived in the Flatbush district for a number of years?

A. Yes, sir, sixteen.

Q. Are you employed in the Borough of Manhattan?

A. I am employed in the Borough of Queens.

Q. What is the nature of your vocation?

A. I am an electrical engineer of the New York & Queens Electric Light & Power Company.

Q. Being an electrical engineer, does that entail a college degree?

A. Yes, sir.

Q. How long have you been an electrical engineer?

A. 1933.

[fol. 1392] Q. I take it your business does not bring you into connection with people in the garment or clothing district?

A. No, sir.

Q. Or in the Brownsville or East New York section of Brooklyn, or the Brooklyn waterfront?

A. No, sir.

Q. Have you ever served as a juror in a criminal case?

A. Yes, sir.

Q. Has it been in the County Court?

A. Yes, sir.

Q. Has it been recent?

A. Within, I think, about two years.

Q. Were any of the lawyers who are now in court engaged in the trial of that case?

A. No, sir.

Q. Was it a criminal case?

A. No, sir.

Q. Did the case come to a conclusion? Did the Judge charge the jury on the law?

A. No, sir.

Q. In your jury service have you had experience in getting a charge on the law from the trial judge in a criminal case?

A. While sitting in court I have heard such a charge.

Q. Would you have any difficulty in taking the law in this case implicitly from Judge Taylor?

A. No, sir.

Q. If selected as a juror in the case, will you endeavor, with common sense and understanding, to apply the law to this case?

A. I will.

Q. I have mentioned the names of nine lawyers representing these three defendants a number of times. Have you heard them mentioned while sitting here.

A. Yes, sir.

Q. Do you know any of the lawyers representing Buchal-
[fol. 1393] ter, Weiss, or Capone?

A. No, sir.

Q. Do you know anybody connected with their law offices?

A. No, sir.

Q. Do you know any member of the bar who specializes in the trial of criminal cases?

A. No, sir.

Q. Since receiving your notice as a prospective juror, did anybody speak to you about the merits of this case?

A. Not regarding the merits.

Q. Has the discussion been limited to prospective service on the jury?

A. Yes, sir.

Q. Do you know the District Attorney of Kings County personally, or any member of his staff by way of Assistants?

A. No, sir.

Q. Do you find any fault with the prosecutor for solving a murder by accepting testimony of an accomplice and using that testimony upon the trial of an indictment?

Mr. Climenko: I object to the form of the question. I object on the ground it assumes a state of facts not before the Court.

The Court: Overruled.

Mr. Climenko: Exception.

A. No, sir.

Q. Do you find any fault, or have you any prejudice against a prosecution which employs the use of accomplice or coparticipant testimony?

A. No, sir.

[fol. 1394] Q. Will you, if accepted as a juror in the case, look at everything that the accomplice says by way of his background, his past contact with criminals, and every vicious and criminal or immoral act he has ever committed, in weighing his believability?

A. Yes, sir.

Q. Will you look at the testimony of an accomplice with caution, with suspicion, and with common sense?

A. Yes, sir.

Q. Will you apply your faculties to find out whether the accomplice has told the truth about these defendants and their participation in the crime?

Mr. Climenko: I object to that as assuming something not before the Court.

The Court: Objection overruled.

Mr. Climenko: Exception.

A. Yes, sir.

Q. Something has been said about the allocation of testimony and applying testimony to one defendant that applies only to that defendant. Will you do that?

A. Yes, sir.

Q. For example, if the testimony of a certain witness applies to only one of the three defendants, will you limit that, in consonance with the Judge's charge, to that specific defendant against whom it is given?

A. Yes, sir.

Q. If the evidence shows a conspiracy by these defendants and the accomplice, and it shows that certain acts were done in furtherance of the conspiracy by one or more of the [fol. 1395] defendants, and if you are charged by the Judge that the jury may in that case take the testimony as against all, will you follow that instruction?

Mr. Climenko: Objected to.

The Court: It is not an accurate statement of the law. The conspiracy has to be established first. The question is too complicated for a lay talesman.

By the Court:

Q. Will you follow the Judge's instructions?

A. Yes, sir.

Q. On that and all other points?

A. Yes, sir.

Q. At the proper time?

A. Yes, sir.

By Mr. Turkus:

Q. If, pursuant to the instructions of law, you say the testimony applies to all three, will you follow the instructions of the law?

A. Yes, sir.

Q. Will you follow the instruction of the law that there must be no conviction of any defendant in a criminal case upon the unsupported or uncorroborated testimony of an accomplice?

A. Yes, sir.—I don't think I got your first question.

Q. Will you follow the instruction of law that there can be no conviction upon the unsupported or uncorroborated testimony of an accomplice?

A. Yes, sir.

Q. Will you use your own mental faculties in finding out who is an accomplice and whether or not there is corroboration of the accomplice in consonance with the [fol. 1396] Judge's charge on the law?

A. Yes, sir.

Q. Just because defendants' counsel may say everybody in the case is an accomplice, that does not decide the case for you—you are going to use your own faculties?

A. Yes, sir.

Q. And by the same token, even if I say they are not, it is still your job to find out what is what in the case; and will you?

A. Yes, sir.

Q. Will you give to the defendants in this case every presumption, every legal right that Judge Taylor will tell you is theirs?

A. Yes, sir.

Q. And after you have given them the benefit of everything that the law of the land says the defendants in a criminal case should have, and your mind is satisfied from the evidence that these three men are guilty of murder in the first degree, and you believe that beyond a reasonable doubt, will you say so in your verdict?

A. Yes, sir.

Q. And will you say that without fear or hesitation or reluctance?

A. Yes, sir.

Q. Is there anything concerning which I have not elicited any response, which would prevent a fair verdict at your hands?

A. No, sir.

Q. Will you, by your verdict, try to do justice in the case?

A. Yes, sir.

Q. Talk the case over with the other jurors with common sense and use your own faculties in deciding upon [fol. 1397] guilt or innocence?

A. Yes, sir.

By Mr. Barshay:

Q. Were you ever called as a juror on a special panel before?

A. No, sir.

Q. Does the word "special panel" denote any significance to you as requiring a special duty?

A. No, sir.

Q. Other than the experience you have told us about, have you ever had any other court experience?

A. Merely serving as a juror in a civil case.

Q. You have never been a Grand Juror in either this court or the Federal Court?

A. No, sir.

Q. Did you ever study law?

A. No, sir.

Q. Is your brother or any member of your family a lawyer?

A. No, sir.

Q. There are a few lawyers by the name of Rose whom I happened to know; are they any relation?

A. No, sir.

Q. Have you ever been the victim of any crime?

A. No, sir.

Q. Have you read about this case at any time?

A. I have read various news items; I read two or three of the articles about Judge O'Dwyer.

Q. Have any of the news items or articles caused you to form an impression with respect to the case?

A. No, sir.

[fol. 1398] Q. Or with respect to the defendants in the case?

A. No, sir. I had a very slight impression with regard perhaps to their character, but not with regard to the merits of the case.

Q. An impression with respect to the character of some of the defendants?

A. Yes, sir, as a group.

Q. Did you form that by virtue of having read about or discussed the defendants?

A. Probably from reading the news items.

Q. You mean that the impression was unfavorable to the defendants?

A. Somewhat.

Q. And it is present with you right now?

A. Yes, sir.

Q. Would it require evidence to remove that impression?

A. Not regarding their innocence or guilt of this crime.

Q. Would it require evidence to remove the unfavorable impression with respect to anything?

A. No, sir.

Q. You would dissipate that impression?

A. As far as I am concerned, it does not have any bearing on the particular case.

Q. If you were listening to a man testifying and you had no impression against him, you would be more likely to believe him than if you had an impression against him?

Mr. Turkus: Objected to.

The Court: Sustained as argumentative.

Mr. Barshay: Exception.

Q. Would you be less likely to believe the person you have in mind if he should take the stand and swear to tell the truth, because of the impression you gained against him?

A. No, sir.

Q. Not at all?

A. No, sir.

[fol. 1399] Q. Would you be less likely to believe the person you have in mind if he should take the stand and swear to tell the truth, because of the impression you gained against him?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. Would it require less evidence on the part of the prosecution?

A. No, sir.

Q. To prove the defendant's guilt, because of that impression you have?

A. I did not hear the question.

Q. Because of that impression you have, would it require less evidence than beyond a reasonable doubt to convince you of the defendant's guilt—the defendant whom you have in mind?

A. I haven't any of the defendants in mind; it is just the group. I don't believe I have even read about a particular defendant. I believe there was that one group.

Q. If somewhere in the back of your head there is some bias against the defendants in this case which will influence your judgment in this case—

A. I don't believe there is any bias.

Q. When you say you "don't believe," does it indicate doubt in your mind that there may be?

A. No, sir.

Q. Is there or isn't there any bias at all based on anything at all with respect to any of the defendants in your mind now.

A. I don't know if it is bias; it is an impression more [fol. 1400] or less as to their character rather than to the merits of the case itself.

Q. Well, sometimes defendants may, if they choose, put their character in issue, and when they take the stand it will be their privilege to put it in issue. Now, if they do put their character in issue with respect to your judgment, wouldn't that be swayed with prejudice against their character?

Mr. Turkus: I object.

The Court: Objection overruled.

A. Only with regard to their character.

By the Court:

Q. Can you put that aside and be guided by the evidence that is brought out in the trial?

A. I could weigh the evidence in this case fairly.

Q. Can you exclude everything else?

A. Yes, sir.

Q. Can you rule out your impression of character?

A. Yes, sir.

By Mr. Barshay:

Q. You referred, Mr. Rose, to the defendants, in your own language, you bunched them together; isn't it because they are being tried together that you bunched them together? Or is it because you read about them?

Mr. Turkus: I understood from the talesman, from his answer, that he was trying to say his impression was gone.

By Mr. Barshay:

[fol. 1401] Q. You referred to the defendants as bunched together?

A. A group.

Q. Use your own language. Whatever you may think it was, would that mean to imply that these men are members of a group—where did you get that idea?

A. I say—I may have a wrong impression, but I thought they were members of this Murder, Incorporated.

Q. And you still have that impression?

A. Yes.

Q. Right now?

A. Yes, sir.

Q. All the time you were here you had that impression?

A. That is right.

Q. You never had any proof, of course, of your impression?

A. No, sir.

Q. Isn't that why you are prejudiced against those men, against this group?

A. Yes, sir.

Q. So the defendants are included in that group?

A. That is what I thought.

Q. And just at this particular second you are still under that impression?

A. Yes, sir.

Q. Consequently you are prejudiced against them by reason thereof?

A. Not prejudiced, no, sir.

Q. Well, I will say an impression detrimental to them.

A. Yes, sir.

Q. Unless you have a better word to use.

A. Yes.

Q. So it would require some proof to dissipate that impression [fol. 1402] that you have?

A. I would try the case itself—

Q. Yes, but you have an impression now.

A. Not regarding the case; only as to their character.

Q. We have gone over that. We may have their character in issue. It will be our choice. We may decide to do it. You say now you have an impression they are members of a so-called group which you mentioned. Wouldn't that affect your judgment in this case if they should put their character in issue?

A. No, sir.

Q. Won't you go through this case believing they are bunched together, as you say?

A. I told you I thought they were members of this group, but I would not bunch them. I am quite sure whatever evidence would be brought out would be sufficient.

By the Court:

Q. You mean you have concluded they are or that the article in the paper put it in your head that they may be?

A. After I saw them named in the case.

Q. That is on the basis of what you read, you assumed that to be true?

A. Yes, sir.

Q. But have you formed any conclusion on that point?

A. No, sir.

Mr. Climenko: I move to strike out your Honor's last question and the answer to it because I take it the answer [fol. 1403] is inconsistent with the question that your Honor put. As I understood the colloquy between the Court and the gentleman, you asked whether or not he had any assumption, and he said he did.

The Court: The Court has ruled. Motion denied.

Mr. Climenko: Exception.

By Mr. Barshay:

Q. Having formed an impression with respect to a certain condition based upon what you read or heard, supposing somebody should take the stand, somebody on behalf of the prosecution, and say that they are members of that group, wouldn't you more readily accept that man's testimony because of the impression you formed?

Mr. Turkus: That would be impossible, because everything is limited to the indictment.

The Court: It is speculative. Objection sustained.

Q. Supposing a group of witnesses offered by the prosecution should come here and make statements under oath that the defendants are bunched together, that they knew a so-called "group", wouldn't that influence your judgment, having already formed your own impression?

A. No, sir.

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Would it require any explanation on the part of any of the defendants because of the impression you formed [fol. 1404] with respect to the charge against them here?

Mr. Turkus: I object.

By the Court:

Q. If the Court should charge you they are not required to explain anything, would you follow that?

A. Yes, sir.

Q. And disregard any impression obtained from papers you read?

A. Yes, sir.

By Mr. Barshay:

Q. Irrespective of the Court's charge—you said you would follow the Court's charge—still would there be a lingering in your mind, some suspicion, with respect to the impression you formed unless it has been explained away by the defendants?

A. Not in regard to the indictment.

Q. Supposing the defendants did not take the stand and made no explanation whatsoever, wouldn't it necessitate, in your judgment, that somebody should come here, or a group of people should come here, and say the defendants are banded together in a so-called "group"?

A. No, sir.

Q. Do you know when the defendant said, "Not guilty", he denied the accusation against him?

A. Yes, sir.

Q. And that is the only accusation against him?

A. Yes, sir.

Q. That means we deny he had any hand in this case whatever, you know that?

A. I don't know that.

Q. You know it now?

A. Yes.

Q. The plea of not guilty puts in issue every accusation [fol. 1405] against the defendants, every single one, you understand?

A. Yes, sir.

Q. Do you think you could follow the instructions of the Court?

A. Yes, sir.

Q. So that if a man says he is an accomplice of the defendant Buchalter, his plea of Not Guilty puts that fact in issue?

A. I don't understand the question.

Q. If a man takes the stand and says, "I was an accomplice of Mr. Buchalter in this case," Mr. Buchalter's plea of Not Guilty puts that fact in issue—whether or not he was an accomplice of Mr. Buchalter. The mere fact he says so does not make it so, you understand?

A. Yes, sir.

Q. So, taking into consideration the fact that the same person, never saw in his life or spoke to in his life the defendant Buchalter, you would find out whether he is an accomplice of Mr. Buchalter in your own mind?

Mr. Turkus: I object to that as an improper question.

The Court: Sustained. It has to be based upon evidence.

Q. If the evidence in this case should reveal to you that despite the fact a man says on the stand, "I am an accomplice of Buchalter," when in reality he is not, and never has seen him or never spoke to him in any way whatsoever, would you take those things into consideration if the evidence so showed?

[fol. 1406] Mr. Turkus: I object. If the evidence showed that he had nothing to do with it, he is not an accomplice.

The Court: You cannot query him as to how he will decide a specific issue that may arise in the course of the trial. Objection sustained.

Mr. Barshay: Exception.

Q. Is there any impression you have personally against my client?

A. No, sir.

Q. As to character or otherwise?

A. No, sir.

Q. None whatever?

A. Only as I said before, against this group that I thought these defendants were a part of.

Q. You are assuming my client is a member of that group?

A. Yes, sir.

Q. Can you lay that aside?

A. Yes, sir.

Q. His plea of Not Guilty says, "I am not a member of any group." Can you lay that aside?

A. Yes, sir.

Q. Will you do it?

A. Yes, sir.

Q. You will never allow it to creep back in your mind throughout this trial, if you are chosen?

A. No, sir.

The Court: The talesman can make a promise as to whether or not he would disregard it.

Q. Will you disregard it at all times?

A. Yes, sir.

Q. At any rate, he is never charged with being a member of a group; you understand that?

A. Yes, sir.

Q. He is charged with the simple accusation of alleged [fol. 1407] homicide, committed by him.

A. Yes, sir.

Q. Everything else must be dissipated from this case.

A. Yes, sir.

Q. With that goes the presumption of innocence. You will accord that to him?

A. Yes, sir.

Q. Mr. Turkus asked you whether anybody spoke to you about the merits of this case, and you said no. It will be for you to decide whether there is any merit to this case. We speak for Buchalter.

A. Yes, sir, as to his innocence or guilt or to his participation.

Q. You appreciate also that the Grand Jury can indict an innocent man?

A. Yes, sir.

Q. Will you compel the District Attorney to sustain the burden of proof of Mr. Buchalter's participation throughout the entire case?

A. Yes, sir.

Q. And if in the wisdom of his counsel, or lack of wisdom, whichever it may be, he shall choose to make no explanation whatever to himself or witnesses, will you hold that against him?

A. No.

Q. Now, the proof must be beyond a reasonable doubt.

A. Yes, sir.

Q. If you or anybody else in the jury room think there ought to be another definition of that, that other definition will be subordinated to that of His Honor?

A. Yes, sir.

Q. Not only must you be convinced of the accomplice [fol. 1408] testimony beyond a reasonable doubt, but also by evidence which is alleged to tend to corroborate the defendants' participation. In other words, every bit of evidence must be believed by you beyond a reasonable doubt. Will you consider the source of any piece of testimony offered here?

A. Yes, sir.

Q. If it is from a tainted or polluted source, will you accept it with caution, if you accept it at all?

Mr. Turkus: Objected to as already answered.

A. I will try it on the evidence.

Q. And the source from which it comes?

A. Yes, sir.

Q. So if a man has an interest in telling his story, or a motive, that motive being the treatment he has received which has inspired him to tell a lie, in his own mind, you will be careful before you accept any such testimony?

A. Yes, sir.

Q. Put it through a sieve?

A. Yes, sir.

Q. You will be the judge?

A. Yes, sir.

Q. You may reject it completely if you want to. That goes with respect to every witness who may be offered for the purpose of tending to connect the defendants with the commission of this crime.

Now, are you prejudiced against a person charged with murder merely because of that charge?

A. No, sir.

Q. Is the fact that a person has been killed, would that in any way prejudice you against the person charged with the killing, without any proof?

A. No, sir.

[fol. 1409] Q. If a person recites mere association with the defendant and nothing else, will you then bunch them together because of what you read in the newspaper?

Mr. Turgus: Objected to.

The Court: Sustained.

Mr. Barshay: Exception.

Q. If a man takes the stand and says, "I have no motive to lie," and that same person has been shown to have committed crimes for which he himself has not been punished, would the mere assertion of himself that he has no motive to lie be accepted by you, or would you weigh that testimony in the light of evidence brought out against the person from the witness stand?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. In other words, his mere saying so will not be sufficient with you?

A. No, sir, I will weigh the testimony.

Q. As the evidence goes in against the respective defendants will you bunch it together or separate it as against the defendant to whom it applies, if the Court so charges you?

Mr. Turkus: Objected to as already answered; this can go on *ad infinitum* in the trial of a criminal case.

By the Court:

Q. You will consider the evidence and give each defendant [fol. 1410] a separate trial, as it were, and the verdict will be separate as to each?

A. Yes, sir.

By Mr. Barshay:

Q. With respect to the defendant Buchalter, can you render a fair and impartial verdict based upon the evidence and from no other source?

A. Yes, sir.

Q. A verdict as to each defendant?

A. Yes, sir.

Q. Should the other members disagree with you, and the quality of the proof does not convince you beyond a reasonable doubt, you will say so by your individual verdict?

A. Yes, sir.

Q. You have that courage?

A. Yes, sir.

Q. And should that be the condition, you will exercise that courage?

A. Yes, sir.

By Mr. Cuff:

Q. Have you ever listened to any of the talks given by Assistant District Attorneys on Judge O'Dwyer's staff?

A. No, sir.

Q. Are you a member of any society that has had talks on the prevention of crime?

A. No, sir.

Q. I gather you read sufficient of the instalments that appear in one of our daily papers about Judge O'Dwyer's career?

A. Yes, sir.

Q. Do you remember whether you read the initial instalment?

A. It was fairly recently; maybe a month or so ago.

Q. It was since this trial commenced?

A. Yes, about that time.

[fol. 1411] Q. Do you expect to take any active part in the coming or present campaign for the Mayoralty?

A. No, sir.

Q. You are not a contributor to any campaign fund?

A. No, sir.

Q. Well, now, these articles you read, did they mention this group you have referred to and with which you have associated my client and the other defendants?

A. The group was mentioned.

Q. I am asking you did it mention this group which you have mentioned, these articles that you read about Judge O'Dwyer's career?

A. The group was mentioned, yes, sir.

Q. That is the group with which you have associated these defendants in your mind, isn't it?

A. That is right.

Q. And that is the group which includes these defendants against whom you have a very distinct and detrimental impression, isn't that so? Didn't you just say that it was a detrimental impression as to their character?

A. That is right.

Q. You realize, don't you, that a man's character is a very important part of his personal make-up?

A. Yes, sir.

Q. And when you have an impression against the character of a man with whom you are associated in business, that adds to his detriment, doesn't it, or is apt to?

Mr. Turkus: Objected to.

The Court: Sustained as argumentative.

Mr. Cuff: Exception.

Q. Is the condition of your mind such that you would [fol. 1412] believe that a man of bad character is more apt to lie on the witness stand than a man of good character?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Cuff: Exception.

Q. Well, you feel, don't you, that a man of good character, if he takes the witness stand in this case, is more apt to tell the truth than a man of bad character?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Cuff: Exception.

Q. Having had that impression, or whatever you call it, you would take your seat in the jury box, if you are selected, with that impression still in your mind, wouldn't you, against that group?

A. Yes, sir.

Q. And against that group with which you had heretofore and now associated in your mind these defendants?

A. Yes, sir.

Q. It is not a group that would impress you, is it, as being a favorable one?

A. That is right.

Q. And that same impression would be in your mind from the moment you listened to the testimony adduced here from the witness stand, wouldn't it?

A. The impression of the——

Q. Won't you answer my question? I am entitled to an answer.

A. The impression I have, as I said before, was against a group. I thought these defendants were members of this [fol. 1413] group.

By the Court:

Q. You told us before you would lay aside and disregard that impression. Are you still sure you can?

A. Yes, sir.

Mr. Cuff: I object to the Court's question as leading and suggestive. I insist upon the question I put being ruled on and answered by the witness.

The Court: He has answered it.

Mr. Cuff: Exception.

By Mr. Cuff:

Q. You said you had formed this impression as a result of reading and discussion?

A. No, sir, not discussion; just reading.

Q. You accepted as true what you read?

A. That is right.

Q. You have had that impression now for how long?

A. Well, since I read the article.

Q. And would you tell us when that was, or does that mean anything to you?

A. I said before I believe it was about a month or six weeks ago.

Q. And for that month or six weeks that impression has remained with you down to the time and including the time you were here and listened to the other jurors being examined?

A. That is right.

Q. And it has not grown any weaker, has it?

A. No, sir.

Q. I will ask you now, did it grow any stronger?

A. No, sir.

[fol. 1414] Q. Just the same as when you first got it?

A. Yes, sir.

Q. Did you get that impression the day you read the first instalment in the paper about Judge O'Dwyer?

A. I would say so.

Q. The other articles did not serve to discredit that?

A. Yes, sir.

Q. You believed the succeeding articles, did you?

Mr. Turkus: I object, he has already answered; he says the impression was created.

The Court: Objection sustained.

Mr. Cuff: Exception.

Q. How many articles or instalments did you read all together in the newspaper or newspapers about this?

A. Not more than three.

Q. You were quite interested in what you read, weren't you?

A. Not too much so.

Q. Were you interested?

Mr. Turkus: Objected to as already answered. He said not too much. I will withdraw the objection.

Q. Were you sufficiently interested to read those three instalments?

A. Yes, sir.

Q. And the impression that was formed at the time before you read the last one, or during the time you read the last one, you will carry with you right down to the end, will you not?

A. Yes, sir.

Q. You have heard since you have been here a good [fol. 1415] deal about the law as to presumption of innocence?

A. Yes, sir.

Q. Do you realize that that is a very vital part of the criminal law that Mr. Turkus asked you if you believed in the enforcement of?

A. I don't know whether he asked me, but I do believe it is important.

Q. He did ask you if you believed in the enforcement of the penal or the criminal law of the State of New York; do you remember that?

A. I do believe in that.

Q. Do you remember? I am asking you that.

Mr. Turkus: I object to it. What difference does it make?

The Court: Objection sustained.

Mr. Cuff: Exception.

Q. Since you have been here you have heard about the presumption of innocence. Do you realize now that that is an actual part of the criminal law of the State of New York?

A. Yes, sir.

Q. Did I understand you to say that your impression of my client and the other two defendants here being members of this group which you have heretofore referred to, that you could give them the full and complete benefit of that presumption if you were selected as a juror?

A. I do.

By Mr. Rosenthal:

Q. What newspaper did you read?

A. I read the *News*, the *Times* and the *Journal*.

[fol. 1416] Q. What newspaper did you read this article in?

A. The *Journal*.

Q. The articles you read were subsequent to your being called for jury service?

A. Yes, sir.

Q. How long after you had been called for jury service, approximately, was it before you read the first article in the *Journal*?

A. About the same time, I believe.

Q. Was it after your appearance in court and the matter was adjourned over until September that you read the first article?

A. It may have been.

Q. And then there was a lapse of time between the first and the second article?

A. I don't know.

Q. Do you know whether there were three consecutive articles you read or whether there was a lapse of time between the first and the second and the second and the third articles you read?

A. There may have been a lapse of time.

Q. What is your best impression at this time, was there a lapse of time between the various articles you read?

A. There was a lapse.

Q. The first article you read, according to your present impression, was after you had first appeared in court in August and had been told the picking of the jury was postponed until September?

A. I believe so.

Q. And the second article, then, was also nearer to the present date, and the third was still nearer than the first [fol. 1417] time you appeared in court?

A. Yes, sir.

Q. After you had read this first article—you read it through to its conclusion?

A. Yes, sir.

Q. About how large an article was it, a page?

A. Several columns.

Q. It was a good, substantial part of a page of the newspaper, the *Journal*?

Q. (The Court): Was that the life of Judge O'Dwyer?

A. Yes, sir.

Q. In the particular paper which you read concerning the life of Judge O'Dwyer was there also comment in respect to a certain group?

A. Yes, sir.

Q. And you were interested sufficiently in reading those comments after reading the second instalment?

A. Yes, sir.

Q. Then you were so much interested that you read the third instalment?

A. I read the third.

Q. Weren't you admonished by the Judge when you first appeared in court to refrain from reading any articles that were in any wise connected with any of these defendants?

[fol. 1418] A. I was.

Q. And notwithstanding that admonition of the Court in respect to refraining from reading articles of a character that were in any wise connected either with this case or these defendants, you continued to read the articles in the *Journal*?

A. There was nothing in the *Journal* in regard to this case.

Q. According to you, the articles led you to believe that these defendants, or some of them, were members of a group?

Mr. Turkus: Objected to as argumentative.

The Court: To begin with the talesman answered merely that it may have been before the trial began; he did not say it was before or after.

Mr. Rosenthal: His present impression, according to my interpretation of his answer, was that to the best of his recollection it was subsequent to the time of his appearance in court.

The Court: I don't recall any such answer.

Mr. Rosenthal: May we have it read?

The Court: How can it be read if it was not said?

Mr. Rosenthal: What has been said has been taken down.

The Court: The Court rules against you upon the basis of what the Court's recollection is.

Mr. Rosenthal: Exception.

[fol. 1419] Q. Whatever it was you read and whenever it was you read it, you formed an impression in respect to

one or more of these defendants, that they were members of a particular group?

A. I figured, I thought that all these defendants were members of that group.

Q. So in the articles you read there was a group mentioned?

A. Yes, sir.

[fol. 1420] Q. And your impression, after reading these articles, was that these particular defendants were members of a particular group, isn't that right?

Mr. Turkus: Objected to as already answered.

The Court: Sustained.

Mr. Rosenthal: Exception.

Q. And you carried that impression that you had gained with you throughout the time you sat in the court-room?

Mr. Turkus: Objected to as already answered.

The Court: Sustained.

Mr. Rosenthal: Exception.

I am addressing my question solely in behalf of the defendant Capone. I have never questioned this talesman at any time until I stood up now, and more particularly—

The Court: The Court has ruled and will not tolerate any debate.

Q. The impression you gained, was it unfavorable to the defendants?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Rosenthal: Exception.

Q. The impression you gained you still have; is that correct?

Mr. Turkus: Objected to as already answered.

The Court: Sustained. He said so.

[fol. 1421] Q. In view of the impression which you say you now have, were certain witnesses to appear for the prosecution and allege that these defendants or one or more of them were members of the group, because of what is in your mind would you give more credence to their testimony than otherwise?

Mr. Turkus: Objected to.

The Court: Objection overruled.

A. No, sir.

Q. You can differentiate between your impressions as to character or of these men being members of the group, and what some one person on the stand may say?

Mr. Turkus: Objected to as argumentative.

The Court: Objection sustained.

Mr. Rosenthal: I take an exception. I challenge this juror for implied bias.

Mr. Talley: We join in the challenge.

The Court: Try the challenge.

(JOHN J. ROSE, the talesman, was then sworn.)

By Mr. Rosenthal:

Q. Now, prior to your being sworn you gave some answers?

A. Yes, sir.

Q. The impression that you have now, as you sit here, before this trial opens, is one of detriment of and concerning the character of the defendants on trial?

Mr. Turkus: Objected to as leading.

[fol. 1422] A. As a member of that group.

By the Court:

Q. You mean you stated that you have not formed a conclusion; this is only an impression of the membership of a group?

A. Yes, sir.

Q. Do you still hold to that, or is your mind really open as to whether or not they are members of a group?

A. I was under the impression they were members of a group.

Q. Have you, in your own mind, come to any conclusion they are, come to a decision?

A. No, sir.

By Mr. Rosenthal:

Q. Is it the opinion you have reached at this moment that they were members of a certain group?

Mr. Turkus: Objected to as already answered.

The Court: Sustained.

By Mr. Barshay:

Q. Did the articles convey to you and have you now presently the impression that the defendants or any of them are members of that group?

A. I have the impression they are.

Mr. Turkus: Objected to.

The Court: Objection overruled.

By the Court:

Q. You mean you have formed the opinion they are or you have formed the opinion they are supposed to be?

A. I am of the opinion they are supposed to be.

[fol. 1423] Q. There is quite a distinction.

A. I am not sure; I only read two or three.

Q. You said you are not sure. You mean you have not formed any opinion?

A. That is right.

By Mr. Barshay:

Q. In so far as you formed any opinion whatever, presently you are of the opinion that they are a part of that group?

A. They are supposed to be.

Q. You think that right now?

A. Yes, sir.

Mr. Barshay: All counsel join in the challenge.

The Court: Challenge overruled.

(Exception to defendants.)

Mr. Turkus: Satisfactory to the People of the State.

Mr. Barshay: Challenged peremptorily, reserving each and every right we have to each and every exception we have for all defendants.

Mr. Cuff: May I ask for my personal guidance how long your Honor expects to sit?

The Court: It depends. We have only — juror so far, after this part of the day's work. That is altogether too small. I thought we would have four or five by this time.

(5:00 P. M.)

(The following talesmen were called to the jury box: Ralph Gluck, No. 2582; Carl A. Ryder, No. 2608; [fol. 1424] Louis J. Silverding, No. 2617; Sid J. Flamm, No. 2620; George B. Habb, No. 2623; David H. Day, No. 2627; Joseph E. Pinto, No. 2629; Arthur Meltzer, No. 2631.)

The Court: The other gentlemen I caution not to read anything about the matter or discuss it. The rest may go until ten o'clock tomorrow morning.

WATER ODLAND, No. 2586, residing at 4323 Ninth Avenue, Brooklyn, New York, was called for examination as to his qualifications.

The Court: The defendants are remanded.

We will reassemble at 5:30 P. M.

(5:30 P. M.)

Walter Orland was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Is that the correct name—Odland?

A. Yes, sir.

Q. You are listed as living at 4323 Ninth Avenue, Brooklyn.

A. Yes, sir.

Q. Is that part of the Bay Ridge section of Brooklyn?

A. It may be. It is just beyond the Bay Ridge section.

By the Court:

Q. It is in Borough Park?

A. Yes, sir, Borough Park is generally known to be down a little further.

[fol. 1425] Q. You are in the Sunset section?

A. Yes, sir.

By Mr. Turkus:

Q. Have you lived in that section for a number of years?

A. Yes, fifteen.

Q. You are listed on the board as a bank auditor.

A. Yes.

Q. Is that for one of the banks in the City of New York?

A. Yes, sir.

By the Court:

Q. What bank?

A. The Chemical Bank & Trust Company.

By Mr. Turkus:

Q. Is an auditor one who examines records?

A. Yes, sir.

Q. Does that take in accountancy?

A. Yes, sir.

Q. Just where is the branch in which you are employed?

A. I am at the main office, 165 Broadway.

Q. Have you been with the bank for a number of years?

A. Yes, sir, eleven years.

Q. May I go along with the understanding that in your occupation you have no contact either in the garment industry or the clothing industry in Manhattan?

A. No, sir.

Q. Do you have any social contact of any kind, nature, or description in these industries?

A. No, sir.

Q. Does that hold true with respect to the Brooklyn waterfront and the Brownsville and the East New York area of Brooklyn?

A. Yes, sir.

Q. Have you heretofore served as a juror in a criminal case?

[fol. 1426] A. No, sir, not in a criminal case.

Q. In a civil case?

A. Yes, sir.

Q. There are nine lawyers here representing three defendants at the bar. Did you hear their names?

A. Yes, sir.

Q. Do you know any of the nine?

A. No, sir.

Q. Do you know anyone associated with them in the practice of law or employed in their law offices?

A. No, sir.

Q. Do you know any member of the bar who specializes in the practice of criminal law?

A. No, sir.

Q. Since your name appeared on the jury panel, and specifically since you got the slip or the notice that you were a prospective juror, did anybody speak to you about this case?

A. Not with respect to the case, no, sir.

Q. Were the discussions limited to prospective jury service?

A. Yes, sir.

Q. Do you have any connection by way of contact, or have you had any, with any union officials in the clothing center or the clothing trucking industry?

A. No, sir.

Q. Or in the teamsters union?

A. No, sir.

Q. Are you in sympathy with the enforcement of the penal law of the State of New York?

A. I am.

Q. If accepted as a juror in this case will you take the law exclusively from the trial judge?

A. Yes, sir.

Q. Will you take the law in its every aspect from the trial judge and endeavor to apply the law with common [fol. 1427] sense and understanding to the facts in this case?

A. Yes, sir.

Q. Do you find any fault or have you any prejudice against the use of accomplice testimony in a prosecution?

A. No, sir, I have none.

Q. I don't know whether you were in the jury box when I spoke about testimony of an accomplice as being the testimony of a co-participant in the commission of a crime. Did you hear that definition of it?

A. Of an accomplice?

Q. Yes.

A. Yes, I think I did.

Q. Do you find any fault with the prosecutor of the county, in order to solve a murder case, to accept the testimony of accomplices and submit it to the jury?

A. No.

Q. Do you find any fault with the prosecution in which testimony of co-participants in the commission of a crime is used against remaining defendants?

A. You mean without being corroborated?

Q. No, the law says it must be corroborated. If that is all the prosecutor has, standing alone, the testimony of an accomplice, the jury would be told to acquit the defendants, to do so summarily, but what I am talking about is, is there any bias or prejudice in the mind of a prospective juror which would cause him to reject accomplice testimony no matter what the circumstances were?

A. No, sir.

Q. And with respect to what constitutes corroboration, will you take the law exclusively from Judge Taylor?

A. Yes, sir.

[fol. 1428] Q. Should he charge you that the jury may find corroboration where there is independent evidence which tends to connect the defendants with the commission of the crime, would you accept that definition of corroboration?

A. Yes, sir.

Q. Will you endeavor courageously to apply it to the facts in this case?

A. Yes, sir.

Q. With respect to the testimony which emanates from accomplices or co-participants will you look at the background of the accomplice, his general habits, and every miserable and contemptible and illegal act he has committed, will you look at that in considering his testimony, in weighing the believability?

A. I will.

Q. Will you, if selected as a juror, apply your intelligence to ascertain if the accomplice in the case is telling the truth about these defendants when he speaks of their participation in the commission of the crime charged?

A. Yes.

Q. In applying common sense and understanding in a situation like that, will you bear in mind these are individuals or people you do not ordinarily come in contact with in your general business experience?

A. Yes, sir.

Q. Will you see whether, in this murder case, what the accomplices say about these three defendants, Buchalter, Weiss, and Capone, is true?

A. Yes, sir.

Q. And if you are satisfied from all of the evidence in the case that it emanates from accomplices and that it [fol. 1429] comes from independent sources, that not only is the accomplice telling the truth about their participation in the murder, but also there is other evidence which tends to connect the defendants with the commission of the crime, and which satisfies you beyond a reasonable doubt, pursuant to the instructions of law given on that point, that these defendants are guilty of murder in the first degree, would you hesitate to say so?

A. No, sir, I would not.

Q. Would you have any fear or reluctance in pronouncing such a verdict?

A. No, sir.

Q. Something has been said by one of the lawyers for Mr. Buchalter that his client has heretofore been convicted of a crime and is presently serving a long Federal term. Would the fact that that appeared in the case cause you to relax your duty as a juror in a case where he is charged with murder?

A. No, sir.

Q. Would you defeat a proper decision in this murder case solely because he is presently incarcerated for the commission of another crime?

A. No.

Q. There has been some talk about allocation or application of evidence to specific defendants. Will you take the rule of law given by the Court with respect thereto and apply the evidence to the particular defendant to whom it applies?

A. I will.

Q. And if the evidence applies and is applicable only to one defendant, will you, following the Judge's charge, apply it to that defendant against whom it is applicable?

A. Yes, sir.

[fol. 1430] Q. If, in consonance with and in pursuance of the Judge's charge, you find the evidence applies to all three defendants, will you apply it to those defendants in the case?

A. Yes, sir.

Q. Do you know the District Attorney of the county, Judge O'Dwyer, personally?

A. No, sir.

Q. Do you know any Assistant District Attorney on his staff?

A. No, I do not.

Q. Will you give these defendants on trial the presumption of innocence, the doctrine of reasonable doubt, the burden of proof, and every right and constitutional safeguard that the Judge tells you the men on trial should have?

A. Yes, sir.

Q. After giving them every safeguard that the law of the land says the defendants on trial should have, in the event you are satisfied beyond a reasonable doubt of their guilt, can I go along with the understanding that you will pronounce such a verdict?

A. Yes, sir, you can.

Q. Will you endeavor by your verdict to do justice?

A. Yes, sir.

Q. Will you listen to reasonable discussion by the other jurors?

A. Yes, sir.

Q. Will you, if accepted as a juror in this case, by your verdict endeavor to do justice?

A. I will.

By Mr. Barshay:

Q. I am a depositor in your company; do you know me?

A. I do not.

[fol. 1431] Q. Do you ever go over to the 50 Court Street branch of your bank?

A. Once a year.

Q. Do you know Jack Smith?

A. I do. He is engaged in that branch.

Q. Do you ever discuss Brooklyn affairs with him?

A. No, sir.

Q. You never have?

A. No, sir. My job does not entail individual accounts; it is for records.

Q. Irrespective of that, did you ever discuss the personnel of the Brooklyn District Attorney's office with any of those gentlemen?

A. No, sir.

Q. Did you read about this case?

A. I have seen headlines. I have never read anything about the case.

Q. Did those headlines leave an impression in your mind?

A. No, sir.

Q. Not at all?

A. Not to the extent of any guilt or innocence.

Q. Irrespective of guilt or innocence, did they leave any impression whatever with you?

A. No, sir, I would say my mind would be open on that question.

Q. I appreciate that, but did it leave any impression with you?

A. No, sir, I would say no.

Q. You would not say they did?

A. No, sir.

Q. Did you read anything with respect to the life of the District Attorney of the county?

A. No, sir.

Q. Did you hear any radio speeches concerning him?
[fol. 1432] A. I believe I did, by Walter Winchell, but just what it was at the time I do not know; it was several years ago.

Q. Did that leave any impression with you?

A. No, sir.

Q. Did you hear any Assistant Prosecutor speak of crime?

A. No, sir.

Q. Did you hear any official speak of crime?

A. No, sir.

Q. Do you know anyone at all connected with the District Attorney's office, clerical, professional, or otherwise?

A. No, sir.

Q. Do you know anyone in the Police Department?

A. No, sir.

Q. Did you ever discuss this case with anyone?

A. No, sir.

Q. You have heard a great many jurors being questioned?

A. Yes, sir.

Q. Did you form any opinion by virtue of what you have heard asked the other jurors?

A. No, sir, I have not formed any opinion.

Q. Do you presently have any impression at all with respect to any of the defendants?

A. No, sir, I do not.

Q. Have you formed an opinion with respect to the lawyers?

A. No, sir.

Q. I hope you don't think I am asking these questions for any personal reasons. I am trying to get a fair jury.

A. I understand.

Q. May I be assured now that you know none of the people in respect to this case?

A. Yes, sir.

[fol. 1433] Q. You know none of the facts in the case?

A. I do not.

Q. You are free of bias?

A. I am not biased.

Q. You are free of prejudice?

A. Yes, sir.

Q. By the same token I take if you are free of anything—Well, I will withdraw that.

Mr. Turkus asked you whether or not you found any fault with a prosecutor for solving a case from within. Are you now in that state of mind that, if accepted, you would accept what is contained in the questions to be the fact?

A. No.

Q. It will be for you to say whether or not with respect to our defendant this case has been solved?

A. Yes, sir, that is correct.

Q. It will be for you to say whether or not a person who claims to be an accomplice is worthy of belief?

A. Yes, sir.

Q. It will be for you to say whether or not a person who claims to be an accomplice is in reality an accomplice to our client Buchalter?

A. Yes, sir.

Q. If it should be developed from his own mouth—this so-called alleged accomplice—that as far as our client is concerned he had never seen him or even talked to him, will you take that into consideration on whether or not he is an accomplice with respect to our client?

A. I will take that into consideration.

Q. And in addition to that will you consider who is the accomplice, what has been his manner of life?

A. Yes, sir.

[fol. 1434] Q. If he has been a crook, a pimp, a murderer, a perjurer, and has committed every other kind of crime, will you apportion and look into the testimony and see whether or not you can believe it?

A. I will.

Q. Even if he says he has no motive for falsifying now, will you take those things into consideration which I just mentioned in determining whether or not he is telling the truth even on that point?

Mr. Turkus: Objected to as already answered; the juror said he would take all these items into consideration.

The Court: Let him answer.

Q. Would you?

A. I would.

Q. If more than one person claims to be an accomplice and the Court shall tell you that one does not corroborate another accomplice, will you follow that law?

A. I shall follow the instructions.

Q. In other words, will you accept quality of proof rather than quantity?

A. I would, yes, sir.

Q. Would it influence you in any respect if the prosecution should have more witnesses than the defendant Buchalter?

A. No, sir.

Q. You have heard about the burden of proof many times?

A. I have.

Q. Always throughout this trial it should be the duty of the prosecution to sustain that burden?

A. Yes, sir.

[fol. 1435] Q. Would you demand that of him?

A. Yes, sir.

Q. Will you at any time expect the burden to shift, if the Court should charge you otherwise?

A. No.

Q. If the Court should charge you otherwise, would you demand some explanation of this charge by the defendant Buchalter?

A. No, sir, I would not.

Q. So that if he chooses not to take the stand—that is not a promise that he will or will not—if he chooses not to and his Honor tells you you must not and cannot draw an unfavorable inference against him by his failure to do so, you will follow that instruction?

A. Yes, sir.

Q. Coming to the witnesses who may offer testimony which tends to connect the defendants with the commission of the crime, you will want to know who they are?

A. Yes, sir.

Q. You will ask yourselves, Why do they give such testimony?

A. Yes, sir.

Q. Will you ask yourself what kind of lives they have led before they took that witness stand?

A. I would take that into consideration.

Q. Will you ask yourself the motive and what hope of reward each person has when he gives his testimony?

A. I will.

Q. If the corroborating witness himself should deny that he is an accomplice, you will look into his life before you will even accept that statement?

A. Yes, sir.

Q. In other words, that mere statement shall not be a [fol. 1436] fact with you unless you thoroughly scrutinize it carefully?

A. Yes, sir.

Q. And that shall be with respect to every witness?

A. Yes, sir.

Q. No matter who he is?

A. Yes, sir.

Q. And every piece of evidence against our client, if it shall be offered, must convince you beyond a reasonable doubt on the entire case before you shall say "Guilty"?

A. Yes, sir.

Q. In other words, that mere statement shall not be a fact with you unless you thoroughly scrutinize it carefully?

A. Yes, sir.

Q. And that shall be with respect to every witness?

A. Yes, sir.

Q. No matter who he is?

A. Yes, sir.

Q. And every piece of evidence against our client, if it shall be offered, must convince you beyond a reasonable doubt on the entire case before you shall say Guilty?

A. Yes, sir.

Q. And should you in that find one reason for doubt which arises out of the evidence, you will give it to the defendant Buchalter?

A. Yes, sir.

Q. And should you determine after listening to the evidence and arguing reasonably with your fellow jurors, that you have an intelligent doubt, will you do that?

A. Yes, sir.

Q. Mr. Turkus asked you or said to you that the law gives every defendant the presumption of innocence. You be- [fol. 1437] lieve in that law?

A. Yes, sir, I believe in that law.

Q. Do you believe in applying it to the extent that that presumption shall remain with him through every single second of this trial?

A. I do.

Q. Even if it takes weeks for the prosecutor to present his case, as each witness testifies and tells his story, if in your mind there be that legal right which is given to the defendant, the presumption of innocence——

A. Yes, sir.

Q. Will you take into consideration the fact when he says "Not guilty" it meant that he is not only not guilty of this crime, but he is not guilty of every accusation made against him with respect to this crime?

A. That is correct.

Q. That means he is an accomplice to no one in the commission of this crime?

A. That is right.

Q. You have had occasion to size up men?

A. I have.

Q. You found on occasion men who have lied to you?

A. That is true.

Q. Sometimes you had to search for the truth, irrespective of the person's statement?

A. Yes, sir.

Q. Will you constitute yourself here as a person who shall search for the truth based upon all this experience that you have had in life, no matter what they say?

A. Yes, sir.

Q. If evidence shall be presented which is subject to two interpretations, an innocence one and a guilty one, and the Court tells you that you must—you have no choice—accept [fol. 1438] the innocent interpretation, will you follow that law?

A. Yes, sir, I will.

Q. If the Court shall tell you, under the same circumstances if there is a doubt which you shall accept, innocent or guilty, you still must accept the innocent one, will you interpret that?

A. Yes, sir.

Q. Especially with respect to association with another individual who may be innocent?

A. Yes, sir.

Q. And under those conditions, you will follow the instructions of the Court?

A. Yes, sir.

Q. You have no fault to find with the privilege and right that is given each defendant to have counsel to represent him in court?

A. I have not.

Q. So, if, by coincidence, counsel shall be compelled to urge an argument previously urged by another on behalf of his own client, the force of the second urging will not be lessened?

A. No, sir.

Q. The fact that Mr. Turkus speaks first and speaks last will not influence you in any respect?

A. No, sir.

Q. I take it you know that the Grand Jury can indict an innocent man?

A. I know that.

Q. Should his Honor tell you that character is no part of this case at all, it is not in issue unless the defendant chooses to make it an issue, will you follow that?

A. Yes, sir.

Q. So that no matter what else you may think with respect [fol. 1439] to our defendant, the sole issue for you to decide is the accusation against him in the indictment?

A. Yes, sir.

Q. No other issue?

A. No, sir.

Q. Now, have you participated in any political activities in this county?

A. No, sir.

Q. Do you intend to?

A. No, sir.

Q. Does the fact that a public official urges his side of an argument weigh more heavily with you than just a plain lawyer who urges his side?

A. It would not.

Q. So can Mr. Buchalter entrust to you the keeping of his legal rights?

A. He can, to the best of my experience.

Q. Anywheres in your mind is there the slightest trace of anything at all which would preclude you from arriving at a fair and impartial verdict in this case?

A. No, sir.

Q. And one which will reflect the proof to you from the witness stand and not from any speeches?

A. That is correct.

Q. There is no doubt about that?

A. No doubt about it.

By Mr. Talley:

Q. Do you understand an indictment by the Grand Jury against anyone is simply an accusation?

A. I do.

Q. And that it does not import the guilt of any of the persons named in the indictment of the crime described?

A. That is right.

Q. And that it is valueless unless it is supported by proof brought against the defendants named in the indictment by [fol. 1440] the District Attorney?

A. That is right.

Q. You understand the guilt of the defendant named in the indictment must be proved beyond a reasonable doubt?

A. Yes, sir.

Q. And after hearing all of the evidence, if you have a reasonable doubt—the kind of a doubt you might have in the ordinary affairs of life, would you give the benefit of that doubt to the defendant?

A. I would.

Q. The Court will charge you that at no stage in this trial is it incumbent upon any defendant to make any answer or explanation of any testimony that has been adduced against him.

A. Yes, sir.

Q. If a defendant is advised, or does not take the stand, the Court will charge you you are not to indulge in any unfavorable presumption against him because of his failure to take the stand; you understand that?

A. Yes, sir.

Q. And will you follow that direction?

A. I will.

Q. Strictly and conscientiously, when it is given by the Court?

A. Yes, sir.

Mr. Talley: No further questions.

By Mr. Rosenthal:

Q. Have you had any prior jury service?

A. Yes, sir, in a civil court, but never in a criminal.

Q. This is the first time you have been called?

A. In a criminal court, yes, sir.

Q. When was the last time you had service?

[fol. 1441] A. Approximately two years ago.

Q. Was it in Kings County?

A. Yes, sir.

Q. In the Supreme Court?

A. Yes, sir.

Q. Did you actually serve?

A. Yes, sir.

Q. What paper did you read? I heard you mention Walter Winchell.

A. The *Telegram*—that was on the radio.

Q. You did not read his column in the *Mirror*?

A. No, sir.

Q. You simply listened to him at nine o'clock on Sunday night?

A. Yes, sir.

Q. And any article in the papers that you have read, you never paid any particular attention to this trial?

A. No, sir, not as to the merits of the case.

Q. You say, "not as to the merits." Did you read anything at all in the paper about any of the defendants?

A. No, sir.

Q. Was there anything in the radio news items which you have listened to, have you any recollection of hearing anything concerning any of the defendants?

A. I have not.

Q. When you were called for jury service, were the names of the three defendants unfamiliar to you?

A. They were.

Q. And whatever knowledge you have gained has been from being present in court and hearing the names discussed?

A. Yes, sir, that is right.

Q. You understand that the defendants on trial are charged with one crime, the crime of having participated in the alleged killing of one Joseph Rosen in 1936?

A. Yes, sir.

[fol. 1442] Q. You understand also that all the law requires them to meet, if you are accepted as a jurymen, is the charge which is imputed in the indictment?

A. That is correct.

Q. And that is all they are prepared to meet?

A. Yes, sir.

Q. The mere fact that one or more of the defendants may know some of The People's witnesses, would that mere knowledge or association prejudice your mind against them unconnected with the particular crime involved?

A. No, sir.

Q. And you understand by now that no matter how many alleged accomplices testify that, in so far as the law is concerned, any number of accomplices is no better than one accomplice under the law?

A. I understand.

Q. And if the Court were to charge you that one accomplice could not corroborate another, you would take that as the law and follow that instruction?

A. Yes, sir.

Q. And you have heard me discuss with the other men the proposition that there are two types of accomplice, one where the Judge tells you——

Mr. Turkus: I object, there is no such thing as two types; the man is either an accomplice or is not. He is an accomplice as a matter of law or he is an accomplice as a matter of fact. I object to the definition of "types."

The Court: As I understand the law, if there is no dispute about it, then the Judge takes it as a matter of law and so charges the jury, but if there is evidence he is, [fol. 1443] and evidence that he is not, it is left to the jury to decide whether he is or not. But an accomplice is an accomplice, regardless.

Mr. Rosenthal: The phraseology I used is "two different types." If there is objection by the District Attorney, I will use a different word.

Q. You understand that in some instances the Court has a right and will charge you that a particular individual is an accomplice as a matter of law?

A. Yes, sir.

The Court: If the evidence is all one way, with no dispute.

The Witness: Yes, sir.

Q. In that event, you understand, you will take it to be the law in applying it to the evidence in your jury room,

that you have no discretion whatever, but must judge that individual as an accomplice?

A. I understand.

Q. Do you understand further that the law also permits, in certain instances, the Court to leave to you as a jurymen whether the man is an accomplice or is not an accomplice?

A. Yes, sir.

Q. Even though that individual on the stand may say to you under oath, "I am not an accomplice," from the circumstances it is left to you as a jurymen to determine whether in reality he is or not?

A. Yes, sir.

Q. And if the evidence warranted in your mind your conclusion in a given set of circumstances, finding the man [fol. 1444] an accomplice, that the Court referred to you the question on, you would not hesitate to do so?

A. No.

Q. Do you understand also that if you once find as a matter of fact, which is within your discretion, that the man is an accomplice, then the law applicable to that particular individual is the same as it is where the Judge actually says he is an accomplice as a matter of law?

A. Yes, sir.

Q. Now then, you have no fault to find with the fact that, irrespective of whether or not you were to believe an accomplice was telling the truth, even then you could not convict a man unless there was other independent supporting evidence tending to convince you beyond a reasonable doubt of the guilt of the individual?

A. Yes, sir.

Q. You have no fault to find with that?

A. No, sir.

Q. If, perchance, it appears that the so-called independent evidence relied upon by the District Attorney is an alleged oral admission, by that I mean one or more witnesses go on the stand and say this defendant on such and such a day at such and such a place admitted to him that he participated in this crime—would you, in judging what force or weight you would give to that testimony, judge the source from which it comes?

A. I would.

Q. If the source from which it comes is one where the individual, either on his examination by the District At-

torney or is forced upon cross-examination to admit that [fol. 1445] he has committed murders, which he admits he committed, and for which he has not been tried, and committed all sorts of other crimes, including perjury, falsely swearing under oath in a court of similar jurisdiction to this, would you take all those facts into consideration plus what favor you might think might be granted to him and what motive he may have, in judging what weight, if any, you would give to him?

A. I would take that into consideration.

Q. And if, after taking these factors into consideration, a reasonable doubt arises in your mind as to whether or not what he was saying under oath was the truth or not, would you resolve that doubt in favor of the defendant if the Court instructed you that all reasonable doubt must be resolved in favor of a defendant?

A. I would.

Q. You may have heard me discuss with other prospective jurors the question of alibi.

A. No, I heard a little this afternoon.

Q. Let me briefly repeat, so you can better answer the questions, which I will propound more clearly: An alibi, you will be instructed by the Court, is when certain individuals take the stand to testify that the defendant was at a place other than the place of the crime at the time when the crime is alleged to have been committed.

A. Yes, sir.

Q. Now then, if the Court were to instruct you that at no time in a criminal case it is incumbent upon a defendant [fol. 1446] to offer any type of evidence, he may stand mute, he may fail to call any witnesses, even though that were the case, it still would be the duty of the District Attorney to prove to your satisfaction beyond a reasonable doubt the truth of the allegations contained in the indictment? You find no fault with that?

A. No, sir.

Q. The mere fact that a defendant may go further than what the law compels him to do, and offer proof to you by himself and by others showing he had no connection or participation in this crime, would that, if the Court charged you that at no time does the burden shift from one side to the other, would that weigh on your mind so

that you would change the Court's charge to you and make the defendant sustain the burden?

A. It would not.

Q. Now, if the Court were to charge you that by reason of the offer of evidence on the part of the defendant of an alibi, that that proof may not in itself be sufficient in your mind to create a reasonable doubt as to whether he committed this crime, and the proof of the alibi was to raise such a doubt in your mind would you hesitate to acquit such a defendant?

A. No, sir, I would not.

Q. The mere fact that I have repeated these questions so often—I may repeat one or more to you unconsciously, although I will try not to—the mere fact there may be one or more of the witnesses who may say they know the defendant or have been with him at some other time, at some other place, unconnected with this crime, in and of itself would not prejudice your mind against him?

A. No, sir.

Q. Or the mere fact that the defendants or one or more of them may say to you on the witness stand under oath, "I know one or two or three of these witnesses and have been in their company on occasions, but have no connection with this crime," would not in and of itself prejudice you against the defendant?

A. No, sir.

Q. Now, simply because a man is a defendant, if he gets on that stand and holds his hand up and the oath is administered to him, and he then testifies, would you disbelieve him because of the fact that he is a defendant in the case?

A. No, sir, I would take into consideration the facts or statements he makes.

Q. You would take into consideration, as you would have a right to, the motive he may have in testifying, but you would also take into consideration his manner of testifying and the manner in which the words come out of his mouth, both on direct and cross, examination, in order to judge in your mind whether you believe he is telling the truth or not?

A. Yes, sir.

Q. And once you have established in your own mind the fact that he is telling the truth, the truth from him would be just as forceful to you as from any other source?

A. Yes, sir.

Q. Now, I don't know whether you were questioned, not having had jury service, on whether the mere fact that [fol. 1448] these defendants have been indicted raises any presumption in your mind which it would necessitate evidence to remove. Have you been asked that?

A. No, sir.

Q. Assuming that the Court were to charge you that an indictment is a mere accusation and has no probative force or effect, you would follow that?

A. Yes, sir.

Q. As the defendant sits here now, so far as you are concerned, he is presumed to be innocent?

A. Yes, sir.

Q. There is nothing at this time which would necessitate their coming forward and establishing their innocence to your mind?

A. That is correct.

Q. From the very outset, if you are accepted as a jurymen, you would see to it that the facts alleged by the District Attorney as being the facts in this case were proven by him to your satisfaction beyond a reasonable doubt, before you would vote guilt?

A. Yes, sir.

Q. You don't know the District Attorney of Kings County?

A. I do not.

Q. Has the District Attorney an account in your bank?

A. I don't know.

Q. Mr. Turkus has said he has an account.

A. I don't know. I have nothing to do with individual accounts.

Q. You have never had to audit his account, to your knowledge?

A. I don't know.

Q. I don't think I asked you whether you had any [fol. 1449] relatives or immediate friends who are lawyers.

A. I have a brother-in-law who is a lawyer.

Q. You have a brother-in-law who is a lawyer?

A. Yes, sir.

Q. What is his name?

A. Robert Duckenson.

Q. Is he in Manhattan or Queens?

A. He practices in Brooklyn.

Q. Does he practice criminal law?

A. No, sir, real estate mostly.

Q. He is not active politically, that you know of?

A. No, sir.

Q. I take it you have never discussed any matters with him?

A. No, sir, I have not; he does not even know I am on the jury.

Q. Have you had any immediate relations with the police department?

A. No, sir.

Q. I take it you do not know Captain Frank Bals, a police officer?

A. No, sir.

Q. Or Lieutenant Osnato?

A. No, sir.

Q. Now, you, like other men, have had no prior criminal jury service. If you were accepted here you know that your opinion in the jury room is as good as anybody else's?

A. Yes, sir.

Q. You know that merely because one or more may have had prior jury service, their reasoning as to the particular facts in this case is no better than yours?

A. That is correct.

Q. You understand, I take it, further, that it is your bounden duty to listen with reason to the reasoning by other jurors?

A. Yes, sir.

Q. It is also your duty not to arbitrarily sit in a corner [fol. 1450] and refuse to tell the reason why you come to a particular conclusion, but to openly and honestly discuss your reasoning power with your fellow members?

A. Yes, sir.

Q. Now, however, if, after doing that, pro and con, they are unable to convince you by their reasoning that the opinion which you have come to is erroneous, would you, simply because of the fact you have never served on a jury, the lateness of the hour, business, or for any other reason which is proposed against you, permit yourself to be swayed and acquiesce in their judgment in preference to your own?

A. No, sir. I would not.

Q. You understand it is definitely your duty to try, if you can, to have a decision in unison or not agree with one another?

A. Yes, sir.

Q. That it is just as much your duty not to, simply for the sake of agreeing, agree with somebody if it does not strike your conscience as being a righteous verdict?

A. I understand.

Q. And if you were not convinced at the conclusion of your argument with your fellow jurymen of the guilt of these defendants, would you have any hesitation or reluctance or aversion to saying, "Not guilty"?

A. I would not.

Q. Would you have any fear of any kind?

A. No, sir.

Q. You have been told by Mr. Turkus that you may hear the same or a similar kind of argument in the course of summation by the attorneys for the defense, and asked [fol. 1451] whether or not that would give any greater weight to the argument. Now, is it clear to your mind that each side of the attorneys here is only responsible for the safeguarding of his particular client?

A. Yes, sir.

Q. And that each set of attorneys has an independent duty to perform?

A. Yes, sir.

Q. Do you further understand that in discussing the case with you each particular attorney will discuss the evidence in so far as it affects his particular client?

A. Yes, sir.

Q. Merely because either counsel for one or the other defendants agree or disagree, will that take any effect away from the discussion, if it meets with your approval, as to a particular defendant who happens to be discussing the state of fact with you?

A. It would have no weight.

Q. There has been great stress laid upon the fact that there are nine lawyers for the defense and whether or not you know any of the nine lawyers. You have heard that asked a number of times?

A. Yes, sir.

Q. Do you know any of the thirty-three Assistant District Attorneys in the District Attorney's office?

A. No, sir.

Q. You see, The People of the State of New York are only another lawyer?

A. Yes, sir.

Q. Do you know The three active Assistants in this trial on behalf of the People, Assistant District Attorneys associated with Judge O'Dwyer—Mr. Turkus, Mr. Joseph, [fol. 1452] and Mr. Klein, who will be here in person when the trial starts?

A. I don't know any of them.

Q. The fact that there are thirty-three against nine, that is not going to weigh in your mind?

A. That has no weight.

Q. Is there any reason you know of which I have not urged by any question that will in any way affect your determination in this case?

A. No, sir.

Q. And irrespective of the argument of any of the attorneys, which includes the District Attorney and his Assistants, you understand that it is not incumbent upon you to accept our word for anything?

A. I understand.

Q. We are not under oath. We give you our view.

A. Yes, sir.

Q. Those views only become important if and when they agree with your views.

A. Yes, sir.

Q. So although the District Attorney starts off first and tells you all he is going to prove, and he winds up last and tells you all that he has proved, that is not going to make any greater impression on you than what the defendants' lawyers may say to you, if it does not meet with your approval?

A. That is correct.

Mr. Rosenthal: No challenge for cause.

Mr. Turkus: Mr. Odland is satisfactory.

Mr. Talley: Peremptorily challenged by the defendants.

(6:30 P. M.)

Mr. Cuff: May I address the Court? The medication [fol. 1453] which I tried to have sent down, due to the fact that I was a little late calling up, is not here, and I understand will not get here tonight, and I am compelled to ask that you adjourn at this time.

The Court: It is with extreme reluctance, because the showing is poor. The Court was not impressed with [fol. 1454] the last challenge. The Court will require that, hereafter, you be prepared with your medication.

Mr. Cuff: I would have been prepared if I had been told in time.

The Court: I am doing it only because I cannot assume responsibility of anything happening to yourself due to deprivation. I understand your physical situation. This must not happen again. Tomorrow we are going to produce something more than today.

Mr. Talley: Before we adjourn court, if you will permit me, I wish to note an exception on behalf of all defendants and their counsel to your statement that you were not impressed with the work today. I submit that is highly prejudicial to the defendant, and also to the attorneys and the talesmen in the box——

The Court: Do not sum up.

Mr. Talley: I am not summing up, but I think you are entitled to my reasons for the taking of an exception. The talesmen were in the box, and those who are there are prospective jurymen, and it has been known that comments of that kind have not been made with respect to the District Attorney's office.

Mr. Turkus: Yes, they have.

The Court: (Addressing talesmen) Please do not read anything; do not listen to any discussion; do not [fol. 1455] discuss it among yourselves, nor listen to anything over the radio. The defendants are remanded.

(Recess taken until Tuesday, October 7, 1941, at ten o'clock a. m.)

[fol. 1456] Peo. v. Louis Buchalter et al.

Brooklyn, N. Y., October 7, 1941.

Trial Resumed

(All counsel answer "Present" in reply to query by the clerk.)

The Court: The Court notes that this morning no women showed up. Besides the one who was excused yesterday at the request of counsel for both sides, the Court granted no excuses. An erroneous press report has been circulated

that the Judge has excused all women from the panel. This is untrue. Application was made in court as to one woman by counsel for the defense, and it was with the consent of the District Attorney that the Court permitted that woman to be excused. A circulation of such a report in the public press is calculated to give the impression that the Court is acting arbitrarily and illegally, and discriminating against women as jurors in this case.

The Court requests that the press reports will correct this impression, and instructs the Clerk to send word to the other women on this panel to report for duty. As each woman is called, if it is desired by counsel for both sides to excuse her, that case will be dealt with individually. The [fol. 1457] Court cannot adopt an illegal and arbitrary policy—a sensational policy in this regard.

(Herman E. Selig, No. 2784, residing at 702 Fortieth Street, Brooklyn, New York, called to fill the jury box.)

The Court: All other talesmen will return at two o'clock this afternoon. Gentlemen, remember the admonition already given.

RALPH GLUCK, No. 2582, residing at 1977 Eighty-Second Street, Brooklyn, New York, called to the witness stand and examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. The trestle board lists your address as 1977 Eighty-second Street, is that correct?

A. Yes, sir.

Q. Is that in the Bensonhurst district of Brooklyn?

A. Yes, sir.

Q. Your profession or vocation is listed as a stamp dealer.

A. Yes, sir.

Q. What is the nature of your business?

A. Selling postage stamps to dealers.

Q. You mean cancelled stamps?

A. Cancelled and unused stamps that dealers collect.

Q. It is what they call a stamp collecting hobby?

A. Yes, sir.

Q. Have you been in the business for a number of years?

A. Yes, sir.

[fol. 1458] Q. For how many years?

A. About fifteen years.

Q. Prior to that what business were you in?

A. No business at all; I was employed.

Q. What kind of work did you do?

A. I was in the house-furnishing business.

Q. For some concern?

A. An uncle of mine.

Q. What is his name?

A. Gluck.

Q. Was the business in Brooklyn?

A. No, sir, in New Jersey.

Q. What city?

A. Norristown, New Jersey.

Q. Have you lived in Brooklyn for a number of years?

A. Yes, sir.

Q. Have you lived in any other district besides Bensonhurst?

A. No, sir.

Q. I take it you understand the nature of the charge in this case, that these defendants are charged with the crime of murder in the first degree?

A. Yes, sir.

Q. Is there anything about the nature of the charge that would prevent you from being a fair and a just juror in the case?

A. No, sir.

Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. As far as you are concerned, will you permit the question of punishment to enter into your mind when deliberating guilt or innocence?

A. Yes.

Q. The law says that you should not consider punishment [fol. 1459] ment when you deliberate on guilt and innocence. Do you understand me?

A. No, sir, not very good.

By the Court:

Q. The law says that punishment does not concern the juror.

A. No.

Q. That is the Judge's affair.

A. Yes, sir.

By Mr. Turkus:

Q. Do you speak a foreign language?

A. Yes, sir.

Q. Is that the language you use in your every-day business?

Mr. Climenko: I object to that as improper.

(Objection overruled. Exception to defendants.)

Q. Are you somewhat unfamiliar with the English language? Is it hard for you to understand?

A. Sometimes.

Mr. Climenko: I object to the form of that question.

(Objection overruled. Exception to defendants.)

Q. As a matter of fact, you had some difficulty in following my questions?

A. That is right.

Mr. Turkus: I am going to apply a challenge.

The Court: Try the challenge.

[fol. 1460] (RALPH GLUCK, residing at 1977 Eighty-second Street, Brooklyn, New York, was sworn.)

By Mr. Turkus:

Q. Before you were sworn you answered questions that I put to you?

A. Yes, sir.

Q. If I were to ask the same questions, would you make the same answers?

A. Yes, sir.

Q. Would those answers be true?

A. Yes, sir.

Q. Did you say you had some difficulty in understanding some of my questions?

A. Yes, sir.

Q. Do you speak a foreign language?

A. Yes, sir.

Q. Is that the language you speak frequently?

A. Yes, sir.

Q. You do have difficulty in understanding English?

A. Yes, sir.

Q. If you were selected, you might have difficulty in understanding the witnesses?

A. Yes, sir.

By the Court:

Q. Were you born in this country?

A. No, sir.

Q. Where were you born?

A. (Unpronounceable name.)

Q. How long have you been in this country?

A. Twenty years.

Q. Are you a naturalized citizen?

A. Yes, sir.

Q. Have you had any schooling in this country?

A. Yes, sir.

Q. What was it?

A. Public school and private school.

Q. How old were you when you came to this country?
[fol. 1461] A. Twenty-two.

Q. You went to public school?

A. Yes, sir.

Q. You mean the night school?

A. Yes, sir.

Q. How many terms?

A. Two terms.

Q. That was a foreign language class?

A. Yes, sir.

(No questions from the defense.)

The Court: Challenge sustained.

CARL A. RYDER, No. 2608, residing at 967 Lincoln Place, Brooklyn, New York, called and examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. 967 Lincoln Place, that is your correct address?

A. Yes, sir.

Q. What section of Brooklyn is that in?

A. That is, I think it is called Crown Heights, I am not sure.

Q. Have you lived in Brooklyn for a number of years?

A. Yes, sir.

Q. More than five?

A. For the past six.

Q. And have you spent some period of time in that section?

A. The past six years.

Q. You are listed as being an insurance broker.

A. Yes, sir.

Q. Are you in business for yourself?

A. Yes, sir.

Q. Is your office in Manhattan?

A. Yes, sir, 151 William Street.

[fol. 1462] Q. Does your business bring you in contact with any persons or firms in the garment district in Manhattan?

A. No, sir.

Q. Or in the clothing district?

A. No, sir.

Q. Or any one of those industries?

A. None.

Q. Does your business bring you in contact with people engaged in the clothing trucking business?

A. No, sir.

Q. Or on the Brooklyn waterfront?

A. Very seldom on the waterfront.

Q. Do you have any connection by way of business or any other connection with the Brownsville or East New York area?

A. No, sir.

Q. With respect to any acquaintance or friendship with any union officials, do you know any union officials connected with the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Are the names of Weinstein or Katz at all familiar to you?

A. No, sir.

Q. Do you have any connection with any trucking officials in the truckmen's union?

A. No, sir.

Q. Have you any familiarity with the name of William Alberts a one-time bondsman?

A. No, sir.

Q. Do you know anyone named Emanuel Buchalter or Phillie Kowas?

A. No, sir.

Q. Do you know anybody named Weiss in the Chevrolet sales?

A. No, sir.

Q. Certain names I mentioned to other prospective [fol. 1463] jurors, is there any familiarity with the names that I mentioned?

A. I don't believe I heard them.

Q. Have you any familiarity with the name of Bruno Belia, an organizer of the Amalgamated Clothing Workers of America, at the home office, or Salvatore Marazzano?

A. No, sir.

Q. Or with Bellanca or Tosca?

A. No, sir.

Q. Or Abraham Beckerman?

A. No, sir.

Q. Or with Murray Weinstein, the Weinstein I referred to, or Samuel Katz of Local 4 of the Clothing Workers Union connected with the Amalgamated?

A. No, sir.

Q. Since you received your notice that you were to be a prospective juror did anybody speak to you about the case?

A. Not regarding the case, no, sir; just the prospective jury service, how long I would be away.

Q. Are you in sympathy with the enforcement of the Penal Law of the State of New York?

A. Yes, sir.

Q. There are nine lawyers representing these three defendants, Buchalter being represented by former Assistant District Attorney Barshay, former Assistant United States Attorney Wegman and Mr. Jesse Climenko; do you know any of those?

A. No, sir.

Q. Or anyone connected with their offices?

A. No, sir.

Q. The defendant Weiss is represented by former General Sessions Judge Talley, former Assistant District Attorney James I. Cuff, former Assistant United States Attorney Murray Kreindler; do you know any of those?

A. No, sir.

[fol. 1464] Q. Or anyone associated with them in the practice of law?

A. No, sir.

Q. The defendant Capone is represented by Mr. Sidney Rosenthal, Mr. Rosenberg, and Mr. Fischbein. Do you know any of those?

A. No, sir.

Q. Or anyone connected with their law offices?

A. No, sir.

Q. Do you know any member of the bar who specializes in the trial of criminal cases?

A. No, sir.

Q. Have you heretofore had jury experience in criminal cases?

A. No, sir, only as a civil juror.

Q. In that case did the case go to the jury so that the Judge charged the jury on the law?

A. Yes, sir.

Q. Do you understand from your experience as a juror that the exclusive province of giving the law to the jury rests with the trial judge?

A. Yes, sir.

Q. Will you, if accepted as a juror, take the law in this case exclusively from Judge Taylor?

A. Yes, sir.

Q. Will you conscientiously and to the best of your ability endeavor to apply the principles of law to the facts in this case?

A. I will do my best.

Q. There is a different degree of proof in a criminal case than in a civil case. In a civil case I believe the Judge instructs you that a fair preponderance of evidence is sufficient. In a criminal case you will receive instructions that guilt must be proven beyond a reasonable doubt. Will you [fol. 1465] follow the instructions of law?

A. I will.

Q. Will you endeavor to follow the instruction of law that the defendant is presumed to be innocent and that surrounds him throughout the trial and is overcome when his guilt is established beyond a reasonable doubt?

A. Yes, sir.

Q. Will you also follow the instruction of law that the burden of proof never shifts in a criminal case, that the

District Attorney must prove guilt beyond a reasonable doubt?

A. Yes, sir.

Q. Will you give the defendants on trial every constitutional right, every reasonable safeguard the law of the land says they should have—the law being given to you by Judge Taylor?

A. Yes, sir, I will do that.

Q. Give the defendants everything they are entitled to, and will you use your common sense and understanding in applying the principles of law which the Judge gives you as to every witness who takes the stand, in other words?

A. Yes, sir.

Q. Have you heard any discussion when seated in this box about accomplice testimony?

A. No, sir—I did last night, yes, sir.

Q. I guess that was the first time you heard it mentioned?

A. Yes, sir.

Q. An accomplice is one who participates in the commission of a crime with others, and his guilty participation makes him an accomplice in the commission of the crime. [fol. 1466] That will be charged to you as a matter of law, that he is an accomplice. Do you find any fault with the prosecutor of the county for solving a case by the use of accomplice testimony?

A. No.

Q. Do you find any fault with the prosecution which employs the use of the testimony of a co-participant in a crime against the remaining defendants?

A. No.

Q. Will you apply the test that Judge Taylor gives you and which should be applied as to the believability and the credibility of that type of witness?

A. Yes, sir.

Q. For example, will you consider the past criminal record of an accomplice?

A. I would.

Q. And will you consider every immoral and vicious or criminal act he has ever done in his life?

A. Yes, sir.

Q. Will you consider every rotten thing there is about him, on the stand, when you weigh his believability?

A. Yes, sir.

Q. By the same token will you weigh whatever motive or interest he may have in testifying?

A. Yes, sir.

Q. Will you weigh everything that can be weighed and look at the testimony of such an individual with care and caution, and even suspicion?

A. Yes, sir.

Q. Will you apply all of those tests and your good common sense in finding out is he telling the truth about these defendants in connection with this murder charge?

A. I will.

Q. And if you are satisfied from all the evidence in the case that the accomplice is not only telling the truth about [fol. 1467] his confederates in the commission of this murder, but you are satisfied too there is other evidence in the case which tends to connect the defendants with the commission of the crime, would you hesitate to reflect that finding in your verdict?

Mr. Rosenthal: I object to the form of the question—

The Court: Objection overruled.

Mr. Rosenthal: He should state "beyond a reasonable doubt." I take an exception.

Q. Having in mind you are satisfied beyond a reasonable doubt.

A. Yes, sir.

Q. Something has been said by one of the lawyers who represent the defendant Buchalter that heretofore his client was convicted of a crime and was sentenced for that conviction and is presently serving a long jail sentence for that past crime or crimes. Would you for that reason, because a man is serving a sentence, be inclined to relax your attitude as a juror on this charge of murder because of his prison sentence?

A. No.

Q. Would you deviate at all from the proper result because of a sentence for past crimes?

A. No, sir.

Q. May I proceed, then, with the understanding that you have no bias or prejudice, either against the prosecutor or against the prosecution which employs the use of accomplice testimony?

A. No.

Q. That you will look with common sense and under-
[fol. 1468] standing to find out whether the accomplice is
telling the truth about participation in crime?

A. Yes, sir.

Q. Do you know the District Attorney of the county,
Judge O'Dwyer?

A. No, sir.

Q. Do you know any Assistant District Attorney on his
staff?

A. I would not say I know them. I met one of them in
connection with a complaint I had made and discussed the
action to be taken on that complaint.

Q. Do you remember how long ago that was?

A. Back in August of 1941.

Q. Do you remember the name of the Assistant District
Attorney?

A. Either Ambrose or Androse.

Q. Was that limited communication you had with the
office by way of meeting the Assistant on a complaint,
would that in any wise prejudice your ability to judge this
case on its merits?

A. No, sir.

Q. And with respect to the allocation of testimony, will
you follow the instructions of law as given you by Judge
Taylor, as to how and against which defendants testimony
applies?

A. Yes, sir.

Q. For example, if the testimony obviously applies only
to one defendant, will you allocate it to that specific
defendant?

A. Yes, sir.

Q. If you find from the evidence in the case there was a
conspiracy and under the instruction on the law you can
[fol. 1469] properly allocate the testimony of the three de-
fendants, will you apply the instruction of law to that
situation?

A. Yes, sir.

Q. And if you are accepted as a juror, will you do it
with common sense and understanding and talk it over with
the other jurors with reason?

A. Yes, sir.

Q. And if selected as a juror, will you conscientiously
endeavor by your verdict to render justice?

A. Yes, sir.

Q. If you are satisfied beyond a reasonable doubt that at the bar of justice, Buchalter, Capone, and Weiss, are guilty of murder in the first degree, if you are satisfied beyond a reasonable doubt as to that, will you have the slightest fear, hesitation, or reluctance in so pronouncing your verdict?

A. None whatever.

By Mr. Barshay:

Q. Near what street do you live?

A. Brooklyn Avenue.

Q. Do you belong to any church or club around that neighborhood?

A. No, sir.

Q. Any men's club?

A. No, sir, none at all.

Q. Did you ever visit the temple at Lincoln and Rochester?

A. No, sir.

Q. Did you ever hear any lectures about crime?

A. No, sir.

Q. Is the complaint you made to the District Attorney still pending?

A. Except for sentence.

Q. In other words, you were the victim of some crime?

A. No, sir, it was in connection with a charge I had [fol. 1470] made to the Children's Society involving an attack upon my son.

Q. The District Attorney's office handled it?

A. Yes, sir; there was no trial.

Q. And is that the only time you came in contact with the District Attorney's office?

A. Yes, sir.

Q. I take it you are very satisfied with the manner in which the prosecution was handled?

Mr. Turkus: I object.

The Court: Sustained.

Q. Your office is on Beekman Street in that insurance building?

A. Yes, sir.

By the Court:

Q. Near Beekman, on William?

A. It is on William, running from Fulton to Ann.

Q. That is the insurance section?

A. Yes, sir.

Q. How long have you been in business there?

A. About six years there.

By Mr. Barshay:

Q. Would you be influenced in any respect because of your connection with the District Attorney's office, to the prejudice of the defendant?

A. No, sir.

Q. What kind of insurance do you handle?

A. All kinds.

Q. Burglary?

A. No, sir, I leave that to my colleague. I specialize mostly in tax cases. My colleague handles the other line. [fol. 1471] Q. Has your firm anything to do with the adjustment of claims resulting from the commission of crimes?

A. We handle none of that whatsoever.

Q. Have you read about this case?

A. Yes, some items.

Q. May I know in what paper?

A. Either in the *Times* or in the *Sun*.

Q. Did you read them before you were called as a juror?

A. Not as I remember; I don't remember anything regarding the case.

Q. Did you read them since you were called as a juror?

A. Just from reading the paper, yes, sir.

Q. Do you believe in the accuracy of the contents of these items?

A. There was really nothing in there except the delay in the trial.

Q. No facts at all with respect to the case?

A. No, sir.

Q. Any with respect to the defendants?

A. None.

Q. Any with respect to the life of Judge O'Dwyer?

A. No, sir.

Q. From reading the headlines have you formed any impression?

A. None whatever.

Q. Did you listen to any speeches over the radio?

A. I listen very rarely to the radio.

Q. Have you any impression now with respect to the defendants?

A. None at all.

Q. In sitting as a juror here and listening to other prospective jurors being questioned, have you formed any impression?

[fol. 1472] A. Not as to the defendants, no, sir.

Q. About the case?

A. Well, just the delay.

Q. Would you charge that to the detriment of the defendants?

A. No, sir.

Q. Am I assured that at this time you are absolutely free of bias and prejudice of any kind or nature?

A. Absolutely.

Q. Since you received your notice has anybody spoken to you about the case?

A. Only as to the extent of how long the jury service might take.

Q. Did anyone express an opinion as to the guilt or innocence?

A. No, sir.

The Court: From present indications most of the time is in the selection of the jury; the case itself may not take so long.

By Mr. Barshay:

Q. Would the element of time enter into your deliberation?

A. No, sir, I leave my affairs entirely to my colleague.

Q. I don't know how long the case may take; that is up to the District Attorney after we get our jury.

The Court: How long do you think it will take, Mr. Turkus, your side?

Mr. Turkus: You mean the presentation of the direct case?

The Court: Yes.

Mr. Turkus: It is awful hard to tell; I can give you

[fol. 1473] this illustration: I tried one case——

The Court: I don't want an illustration. Approximately how long do you think?

Mr. Turkus: Unless the cross-examination is protracted——

The Court: No, how long will it take? Your side.

Mr. Turkus: It should take a week, that is all, for the People's case—I mean that as an estimate; I will not guarantee anything.

By Mr. Barshay:

Q. At any rate, the length of time you will be required to stay will not influence your mind one way or the other; you will not charge it to either side?

A. No, sir.

Q. When Mr. Turkus asked you whether or not you found any fault with the District Attorney who solved a case from the inside, did you understand by that, first, it is no guarantee to you that he has solved the case from the inside, but he intends it shall be proven from witnesses on the stand?

A. Yes, sir.

Q. In other words, you do not assume the truth of any contents of any question that either he or I put to you?

A. No, sir.

Q. You will wait until you hear the testimony from the witness stand and determine for yourself whether or not this case has been solved from the inside?

A. Exactly.

Q. As far as finding fault, I take it you will not find fault with either side for the presentation of the case?

[fol. 1474] A. No, sir.

Q. Mr. Turkus presents what is handed to him.

A. Yes, sir.

Q. There is no warranty on his part of everything he presents.

A. I understand.

Q. Do you know Mr. Ryan, head of the Longshoremen's Union?

A. No, sir.

Q. There has been some mention made of Mr. Potofsky. Do you know anything at all about him?

A. I know none of them.

Q. Or Mr. Waldman?

A. No, sir.

Q. None of those names mentioned here are familiar to you in any respect?

A. No, sir, not a bit.

Q. Have you heard of the name of Reles, Abie Reles?

A. Yes, sir, I have.

Q. And Sholem Bernstein?

A. I don't remember that, no sir.

Q. At any rate, no matter what you may have heard or you may have read, it will be dissipated, and you will be open and free and weigh only what comes forth from these people if they should testify under oath?

A. Yes, sir.

Q. Do you believe, if the Court shall charge you that every defendant is presumed innocent, that you can render to him that presumption?

A. Yes, sir.

Q. In other words, do you believe now that our defendant is presumed innocent in law, just as innocent of this charge as any person in this court?

A. Yes, sir.

Q. Do you believe that a substantial right goes to every [fol. 1475] defendant?

A. Yes, sir.

Q. Will you guard him with that presumption throughout the entire trial?

A. I will.

Q. Do you believe that the indictment which the District Attorney has found against him is merely an accusation which the Grand Jury, through the District Attorney, has found against him, and is simply an accusation?

A. Yes, sir.

Q. That it merely says that "We accuse the defendants of the commission of the crime"?

A. Yes, sir.

Q. That it has no force? Do you agree with that?

A. I do.

Q. In the language of the Court, it has no evidentiary value whatever; do you understand that?

A. Yes, sir.

Q. And you are in accord with that?

A. Yes, sir.

Q. You believe, too, that the Grand Jury can indict innocent men?

A. Yes, sir.

Q. That is possible?

A. Possible.

Q. Are you in accord with the law which says that one who pleads Not Guilty to a charge as presented in an indictment denies every allegation in the case against him?

A. I do.

Q. That means he denies he had any accomplice whatsoever or that he had any part in the commission of this crime. You believe in that law?

A. Yes, sir.

Q. That goes together with the presumption of innocence?

A. Yes, sir.

Q. Do you believe in the law which says that the District [foi. 1476] Attorney assumes and must sustain the burden of proving the charge against the defendant?

A. Yes, sir.

Q. Will you compel the prosecutor to carry out that burden?

A. I will.

Q. If the Court shall tell you that at no time does the burden shift to the defense, will you implicitly follow that instruction?

A. I will.

Q. In other words, if a witness for the prosecution takes the stand, you will say to yourself, "I will wait and hear what the defendant says about this"?

A. No, sir.

Q. Do you believe in the law which says that no defendant need assert his innocence or prove his innocence or establish any proof in this case?

A. I do.

Q. That if he does not explain a single thing; if he does not take the stand himself, you may not draw any unfavorable inference against him?

A. No.

Q. Do you believe in that law?

A. Yes, sir.

Q. I am now assuming that his Honor shall so charge you.

A. Yes, sir.

Q. So that, if in the wisdom of counsel our client should not take the stand, we offer no explanation through witnesses of any charge against him, you will not draw any unfavorable inference against him by virtue thereof?

A. I will not.

Q. You will still demand that the prosecutor offer proof showing him guilty beyond a reasonable doubt?

A. Yes, sir.

[fol. 1477] Q. Now, that means you will be guided by the proof and nothing else?

A. Yes, sir.

Q. And then you will be the judge of whether or not that proof is of such a quality as you believe, beyond a reasonable doubt?

A. Yes, sir.

Q. You understand that not every person who takes the stand and raises his right hand and swears to tell the truth does tell the truth?

A. I understand that.

Q. You want to know from whom the proof comes?

A. Yes, surely.

Q. I take it that you dealt, in your regular business affairs, with men who apply for credit?

A. Yes, sir.

Q. Whether financially or just a desire to be believed?

A. Yes, sir.

Q. In other words, to believe the thing, to believe his views.

A. Yes, sir.

Q. If a man takes the stand or a group of men take the stand and say, "We are accomplices in this murder," you will take into consideration whether they are or not, having in mind that out of the mouth of at least one of them, at some time or at some place, in some court, under oath, he denied being an accomplice?

A. Yes, sir.

Q. And you will search for the truth as to whether he is or not?

A. Yes, sir.

Q. You will take all these things into consideration?

A. Yes, sir.

[fol. 1478] Q. In addition you will take into consideration the criminal life he has led?

A. Yes, sir.

Q. And each commission of crime he admits out of his own mouth, you will take that with a great deal of caution, every word he utters from the witness stand?

A. Yes, sir.

Q. If he says he is a robber, a murderer, a pimp, a perjurer, a shylock, and he admits all that, you are going to be more careful in searching for the truth?

A. Yes, sir.

Q. No doubt about that?

A. No.

Q. And will you also search for a motive or interest of the persons who come here and say they have told the truth?

A. Yes, sir.

Q. If you find they have a motive which has induced them to falsify, you will be still more careful in considering their testimony?

A. I would have to be, yes, sir.

Q. If you find that the same person or persons have been so handled awaiting trial of this case, in a manner which would cause them to further falsify, you would take that into consideration too?

A. I don't quite understand your question.

Q. If a man has been treated in a manner, such as living in hotels, taking rides, playing baseball, given the privileges that an ordinary prisoner does not get or that type of crook is not entitled to get, will you take that into consideration, if that treatment he has been receiving will induce him to falsify?

A. Yes, sir.

[fol. 1479] Q. In other words, sometimes a person may take it into his own mind, because of the manner of life he has been allowed to live in the last year and a half or so, and go on the stand and lie about things; isn't that possible?

A. Yes, sir.

Q. And it will be for you to decide whether that is the fact?

A. Yes, sir.

Q. Even if he denies he has any motive in telling falsehoods you are not bound to believe his denials?

A. No, sir.

Q. He may deny from today until doomsday; if you find there is a motive which is hidden, even if he denies it, you

will consider his testimony more carefully by virtue of even his denial?

A. I will.

Q. So, in other words, when you say to the District Attorney in your own mind, "You give us, you prove," you mean, "You prove by believable evidence," evidence that you as a juror can believe after sifting it carefully and after looking into the source from whence it comes?

A. Yes, sir.

Q. You would not drink polluted water without boiling it?

Mr. Turkus: I object.

The Court: Objection sustained.

Q. There is some other testimony, because it is admitted here that on the testimony of so-called accomplices you would not even have an issue to decide--so I take it the District Attorney, in the discharge of his duty, will offer other testimony tending to corroborate. The same rules I [fol. 1480] have outlined will apply to the people who offer this other testimony; isn't that so?

A. Yes, sir.

Q. And if they are murderers, pimps, robbers, extortionists and gunmen, you will weigh their testimony just as carefully?

A. Yes, sir.

Q. In other words, the other testimony in the nature of a guarantee of the accomplice's telling the truth, if it is no better than the source than which it came, you will consider that most carefully?

A. I have to.

Q. If his Honor should charge you that character plays no part in this case at all, unless the defendants or any of them offer it in evidence, will you follow that instruction?

A. I will.

Q. In other words, no matter what you may, subconsciously, think, unless he puts his character in issue, it will have nothing to do with this case?

A. Exactly.

Q. When we asked prospective jurors whether or not they held it against our client because he is now incarcerated for a long time, I asked it for the purpose of finding out whether or not that fact, his imprisonment and conviction, would prejudice people against him from the very

cutset. There is such a possibility, you know. Will you be prejudiced by virtue thereof?

A. No, sir.

Q. In other words, what happened, happened?

A. Yes, sir.

Q. "What is the charge now?" that is all you are concerned with?

A. Yes, sir.

Q. What is the proof in the case? That is all you will be guided by?

A. Yes, sir.

Q. The fact that the defendants are brought in here under guard or under the care of police and attendants, that is merely the process of bringing prisoners into court. That has nothing to do with the case, you understand?

A. I understand.

Q. That does not detract from the presumption of innocence?

A. No, sir.

Q. We have no control over that and you will not use it against him?

A. No, sir.

Q. If any evidence you hear is subjected to interpretation, one of innocence and one of guilt, if the Court shall tell you you must—you have no choice—accept the innocent interpretation, will you follow that law?

A. I will.

Q. In other words, if a man says, "I was with so and so," mentioning any defendant, and that is the subject of an innocent interpretation, you must give it an innocent interpretation?

A. Yes, sir.

Q. Even if there is a doubt as to which interpretation you shall give, you still may give it the innocent one; will you do that if his Honor shall so charge?

A. Yes, sir.

By the Court:

Q. Do you realize what counsel means? A person may do a thing which may be done innocently and may be done guiltily.

[fol. 1482] A. Surely.

Q. It can be one way or the other—there are many things like that in life. If what was done is consistent with innocence, the person is entitled to the benefit of that?

A. Yes, sir.

Q. You get the point?

A. Yes, sir.

The Court: I don't like to charge in an examination of a juror.

By Mr. Barsbay:

Q. If the Court shall tell you you must consider evidence individually in this case, except he charges otherwise you will not bunch the evidence together and charge it to all three?

A. No, sir.

Q. It may sometimes be difficult to separate each bit of evidence, but will you try to do your best?

A. Yes, sir.

Q. And if there is a reason for doubt which you can derive from the evidence with respect to Buchalter, if there is that reason, will you give it to him?

A. Yes, sir.

Q. No matter how many other gentlemen may honestly disagree with you, you personally, after reasoning, logic and talk, and sifting the weight of evidence, you yourself feel there is a reason for doubt, you give it to the defendant?

A. If I have a reasonable doubt, I will give it.

Q. When a reasonable doubt arises out of the evidence?

A. Yes, sir.

Q. I take it that you will take into consideration if some- [fol. 1483] one comes and says, "I am an accomplice of Mr. Buchalter," the fact that that person has never even seen or spoken to Buchalter, that will be one of the things you will take into consideration?

A. Yes, sir.

Q. Can Mr. Buchalter entrust to you every right the law gives him?

A. He can.

By Mr. Cuff:

Q. Have you ever served on any Grand Jury, either State or Federal?

A. No, sir.

Q. You are associated with other brokers in the insurance business?

A. One other.

Q. Is that in the Aetna Life Building?

A. Yes, sir.

Q. Have you been associated with that company for some years.

A. Well, I am not really associated with the company; we established an office there for convenience.

Q. Well, now, since you have been coming to court in this case, have you had discussions with your associates or others over in the building or in that section of the city where you maintain your office?

A. Yes, as to when I would be back.

Q. Did any one of them express to you an opinion about the facts or the defendants in this case?

A. No, sir.

Q. Has anybody else, aside from your associates in the insurance business, discussed this case with you either at home, social contacts outside your home or elsewhere?

A. Only so far as to determine when I would be home [fol. 1484] and where I would be and at what time.

Q. Nothing about the merits of the case?

A. No, sir.

Q. You said you read something about Abie Reles. Can you tell us where you read that?

A. As I remember, it was in connection with another trial.

Q. In what papers did you read it, do you recall?

A. It was either in the *Sun* or in the *Times*.

Q. Do you read the *Mirror*?

A. No, sir.

Q. How many times did you read about him?

A. That would be hard to say, it is so long ago.

Q. Did you read about him more than once?

A. Probably.

Q. Did you follow the accounts of the trial to which you refer you read about Reles in that connection?

A. I followed the trial partly, only in connection with Reles himself, as I recall the name.

Q. Well, now, you cannot tell us how long ago that was?

A. No, sir.

Q. Was it more than a year ago?

A. Quite likely.

Q. Did you have any impression that affects your mind unfavorably to these defendants as a result of anything you read?

A. None whatsoever.

Q. I take it we can rely on the fact you have at present an open mind, ready to listen to the evidence presented here?

A. Yes, sir.

Q. And to weigh it carefully and decide where the truth [fol. 1485] lies?

A. Yes, sir.

Q. Now, on the question of reasonable doubt, assuming the Court will charge you that a reasonable doubt is one which arises from the evidence in the case or the lack of evidence, would the instructions as given to you and after carefully considering the evidence, the credibility of the witnesses, discussing it fairly, honestly, with your fellow jurors, you reach a conclusion in your own mind that there is a reasonable doubt as to the guilt of the defendants or any of them, will you have any hesitation, fear or reluctance in returning a verdict of Not Guilty?

A. No, sir.

Q. If the Court instructs you, as it will, I am sure, that you must weigh the evidence and have no fear, can we rely upon your adhering to your opinion unless you are convinced by reasonable argument based upon the evidence in the case that you are wrong in adhering to that reasonable doubt?

A. Please repeat that question.

Mr. Cuff: I will withdraw it.

By the Court:

Q. Other jurors will not cause you to change your mind—you will be guided by your own opinion as to reasonable doubt?

A. Absolutely.

By Mr. Cuff:

Q. And that is despite the numbers that may be opposed to you, despite the length of time you may be held, you will

[fol. 1486] hold to that reasonable doubt if it is an honest one?

A. Absolutely.

Q. You have been asked a good deal about the presumption of innocence. I would like to know if, in your deliberations, you will consider all of the evidence when you get to your jury room and you will honestly apply, in your own mind at least, that presumption of innocence which is of vital importance and which the law gives to these defendants.

A. I will do that, yes, sir.

Q. And you will do that until there is a unanimous agreement that the defendants are guilty beyond a reasonable doubt, or any of them?

A. Yes, sir.

By Mr. Rosenthal:

Q. In addition to having heard of Abie Reles, do you recall ever hearing any other names that are familiar to you now, in your reading?

A. Well, I remember in connection with the trial the last trial that was held.

Q. How often have you read about Abie Reles in the last year or year and a half?

A. Once or twice probably.

Q. Did you follow any paper in comment with respect to him?

A. Not as I remember.

Q. Assuming he were to be called as a witness in this trial, would the fact of your reading or what you have learned or heard about Abie Reles in any wise tend to influence you as to your determination of the truth or falsity of his testimony in this case?

A. No, sir.

[fol. 1487] Q. Is there any doubt in your mind?

A. None at all, just a name that I have read in the paper.

Q. In addition to being a name, that is a name which you have read in connection with some other article?

A. The previous trial.

Q. Having read that name in connection with a trial, has it left any impression concerning the individual?

A. You mean he himself?

Q. Yes. Answer yes or no to that question.

A. Not an impression, no.

Q. Well, has it left anything in your mind in connection with the individual himself?

Mr. Turkus: I object to that.

The Court: Sustained as too vague.

Q. Can you give us any idea about how long ago it was you read those articles?

A. No, sir, I cannot, honestly.

Q. Can you give us any idea of the newspaper you read them in?

A. The *Times* or the *Sun*.

Q. Have you ever read the names of any of these defendants in any paper?

A. Only in the news items of the *Times* and the *Sun*.

Q. In connection with that, you say you only read in respect to the so-called delay in the trial?

A. That is all.

Q. And the fact that there was a case with Rosen?

A. Yes, sir, that is right.

[fol. 1488] Q. At no time has anybody discussed, other than what you have read in the paper, anything concerning any of the defendants?

A. No, sir.

Q. As you sit here now have you any impression one way or the other as to the guilt or the innocence of these defendants?

A. None at all.

Q. Have you any idea of the manner in which an indictment is found?

A. I presume it is brought to the attention of the District Attorney and they ask the Grand Jury for an indictment.

Q. Are you aware of the fact that when the Grand Jury meets, a defendant is not present nor is there any lawyer in his behalf present?

A. I understand.

Q. That he has no opportunity either to hear what the people in the Grand Jury say or to cross-examine or to do anything whatever?

Mr. Turkus: I object.

The Court: Objection sustained.

The Court:

Q. If the Court charges you that an indictment is simply a written statement of a charge and has no value as evidence, will you follow the charge in that respect?

A. Yes, sir.

The Court:

Q. That is not evidence.

A. I understand that.

Q. Assuming, for instance, that the proof or evidence is offered in this case on behalf of The People, and the defendants offer no evidence, would the fact that there is an indictment, after hearing the Court's charge or statement to [fol. 1489] you now, would that in any wise weigh in your deliberations in the jury room?

A. No.

Q. You understand that The People at all times are compelled to establish the guilt of anybody accused of crime beyond a reasonable doubt?

A. Yes, sir.

Q. And you further understand that at no time is the defendant called upon to make any answer to any charge?

A. I understand.

Q. And even though no answer is made, you cannot utilize that fact in the jury room in deliberating on the guilt or innocence of an individual?

A. I understand.

Q. The mere fact that the defendant represented by myself were to offer evidence, in view of what you have heard here would that fact in your mind compel him to bear his burden of proof?

A. No.

Q. Do you understand what I mean by the word "alibi"?

A. I believe I do.

Q. Briefly, a person has a right to say where he was at a particular time when he is accused of being in some other place?

A. Yes, sir.

Q. Then, assuming proof is offered here by the defendant, represented by myself and my associates, in the nature of an alibi, and the Court were to charge you that the law is that a defendant need not prove his innocence by an alibi, but that if the proof of an alibi is sufficient to raise a rea-

[fol. 1490] sonable doubt in your mind as to whether the individual committed the crime or not, you must resolve that doubt in his favor, the same as you resolve any other doubt, and give him the benefit of that doubt and acquit him—would you have any difficulty in following that law?

A. None.

Q. You feel that is a proper law and you could follow it?

A. Yes, sir.

Q. You have heard Mr. Turkus explain that an accomplice is one who participates in a crime?

A. Yes, sir.

Q. And I assume you heard, since you have been here, that no man can be convicted on the uncorroborated testimony of an accomplice?

A. I heard that, yes, sir.

Q. Do you understand also that no matter how many persons or accomplices testify, that it is no better than one accomplice, in so far as its legal value is concerned?

A. Yes, sir.

Q. Now, you further heard discussed, and if you have not I wish you would tell me, the question that in order to convict there must be other evidence outside of the word of the accomplice, even though that word is believed by you, tending to connect each of the defendants with the crime?

A. Yes, sir.

Q. We have no way at this time of ascertaining what that evidence is; it may in a number of forms; therefore, you understand, those questions directed to you may not be finally raised upon the trial, even though we ask you about them. The evidence does not start until the witnesses take the stand.

[fol. 1491] A. I understand.

Q. Assuming that someone were to take the stand and allege that a defendant told him that he had participated in the crime—do I make myself clear?

A. Yes, sir.

Q. It would be for you then to determine, you understand, the truth or falsity of the statement of that individual that swore on the stand that such was the case?

A. Of course.

Q. Now, in determining what weight or value you would give to such testimony, would you apply all the tests which you would ordinarily apply in the ordinary course of your

business in determining what weight you would give to a statement of that person under oath?

A. Yes, sir.

Q. If you ascertain that the individual or individuals who may make these statements were men who either by virtue of their admissions to the District Attorney before their cross-examination or on cross-examination were compelled to admit that they had committed a number of murders for which they have never been punished, plus other crimes; that under oath they have falsely testified heretofore, even though it was in a court of similar jurisdiction to this; and in addition to that a motive would arise in their mind to tell a story so as to favor themselves; if such things existed, would you scrutinize carefully, with caution and suspicion, what they told you on the stand?

A. I would have to.

Q. You would do the same thing in your ordinary business [fol. 1492] if somebody even only lied to you three or four times about their assets, and then came to you the fourth time and told you a story, you would look very carefully?

A. Yes, sir, I would be inclined to.

Q. You would not consider them such a good risk—I think that is the word you use in the insurance business.

A. Yes, sir.

Q. In judging—this is more serious, because the risk in the charge of murder in the first degree is a man's life—in judging what weight or credibility you would give to the individual who would make a statement of that character, you would take the entire background plus the motive and interest he might have in making that statement?

Mr. Turkus: I object to that as already having been gone over.

The Court: Objection overruled.

Mr. Rosenthal: I will withdraw the question to save time, as long as it does not meet with the approval of the District Attorney.

Q. Assuming the defendant were to take the stand and offer himself as a witness, would that in your mind create the thought it is incumbent upon him to prove his innocence to you?

A. No, sir.

Q. Of course, if the defendant takes the stand, you understand, you will also apply the tests which you apply to other persons, what interest he may have in telling a falsehood?

A. Yes, sir.

[fol. 1493.] Q. But if you once determine he was telling you the truth in respect to this particular episode, do you realize that the truth from him is just as forceful as from any other source?

A. Yes, sir.

Q. And if the Court were to charge you that his testimony, in and of itself, if it created a reasonable doubt in your mind as to any participation by him in the particular crime, must be resolved in his favor, you would follow that instruction?

A. Yes, sir.

Q. You do not believe that because the defendant comes forward and offers proof, in the event of a denial of a motion to dismiss by the Court, which is a question of law—you don't believe that merely because the defendant comes forward with proof, either his own proof by himself taking the stand, or a witness, after the Court has denied a motion to dismiss at the close of The People's case, which is a question of law, that that changes the burden of proof or puts it onto his side?

Mr. Turkus: I object.

The Court: Sustained. That is a question of law.

Mr. Rosenthal: Exception.

Q. If the Court were to charge you that its denial of the motion to dismiss at the close of The People's case is merely a question of law, and that the offer of proof by the defendant thereafter raises no presumption either in the Court's mind nor should it raise any presumption in [fol. 1494] your mind as to the guilt of the defendants, would you follow that?

A. Yes, sir.

Q. Having in mind the last question which I asked you, merely because a defendant would then offer proof to you, it would not raise the presumption in your mind that he is guilty of the crime, would it?

Mr. Turkus: Objected to as already answered.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. Is there any reason that has not been reached by any question, which would, in your opinion, prevent you from being a fair and impartial juror?

A. None whatever.

Q. Have you any relatives or close friends on the Police Force?

A. No, sir.

Q. There is a Detective Ryder, I understand. Is he any relation to you?

A. No, sir.

Mr. Turkus: Satisfactory to The People of the State.

Mr. Talley: Challenged peremptorily by defense.

LOUIS J. SILBERLING, No. 2617, residing at 929 Hutchison Court, Brooklyn, New York, examined as to his qualifications to serve as a juror.

The Court: It is harder for the Court to proceed with the selection of the jury than to try the issue. Please do not delay.

By Mr. Turkus:

[fol. 1945] Q. You are listed as living at 929 Hutchison Court.

A. Yes, sir.

Q. Is that Sheepshead Bay?

A. Just about at the end of Flatbush, Sheepshead Bay section.

Q. Your vocation is that of business manager, without any specific reference to what you do.

A. I am employed by a music publisher.

Q. What is the name of the concern?

A. The Famous Music Corporation.

Q. What is their address?

A. 1619 Broadway.

Q. Is that a business of having song writers write music and then publishing it, and is it distributed through machines?

A. Publishing the music to music firms.

Q. It would be the distribution to various retailers?

A. Yes, sir.

Q. Have you been engaged in that business for some time?

A. Yes, sir.

Q. For how many years?

A. Nine years.

Q. Prior to that what was your business?

A. I was in the insurance business.

Q. Were you in business for yourself?

A. Yes, sir.

Q. As business manager, do you have anything to do with writing the songs, or just the distribution?

A. Just the distribution, supervising and preparing it.

By the Court:

[fol. 1496] Q. Do you contact radio singers?

A. No, sir.

Q. Just shop?

A. No, sir, just supervising the preparing of publications for sale.

Q. You had nothing to do with the promotion?

A. No, sir.

By Mr. Turkus:

Q. When you were in the insurance business, were you in business in Manhattan?

A. Yes, sir.

Q. Did business at any time bring you in contact with persons in the garment or clothing industry?

A. Yes, sir.

Q. Has that been at the time you were in the insurance business?

A. Yes, sir, that is right.

Q. That was sometime in 1932?

A. Between 1929 and 1932.

Q. Have you maintained any contacts socially with people in the garment or clothing trade since?

A. Yes, sir.

Q. Do you meet these people frequently?

A. Rather frequently.

Q. Have you, by virtue of your former business connection, and now by your social connections, have you ever heard the name of Lepke or Curley discussed?

A. Never.

Q. Did you hear that discussed at the time you were in business?

A. No, I don't think so.

Q. Have you heard any discussions about the investigation of Thomas E. Dewey in the garment center and clothing districts?

A. I have.

Q. Have you discussed those matters with your friends who are affiliated with the industry in the clothing center? [Fol. 1497] A. Yes, sir, occasionally.

Q. As a result of the things you have heard discussed, is the name Hymie (Curley) Holtz familiar?

A. No, sir.

Q. Is there any familiarity with the name of Bruno Belia?

A. No, sir.

Q. Or Bellanca or Tosca?

A. No, sir.

Q. Or Salvatore Marazzano?

A. No, sir.

Q. In discussions have you heard the name mentioned of Murray Weinstein, one-time manager of Clothing Cutters Local No. 4, affiliated with the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Or Samuel Katz?

A. No, sir.

Q. Or Philip Orlofsky, at one time manager of the Cutters Union?

A. No, sir.

Q. Has business in any wise brought you into contact with persons or firms on the Brooklyn waterfront?

A. No, sir.

Q. Did you ever have any contact in the Brownsville or East New York area of Brooklyn?

A. Yes, sir, I did.

Q. Has that been when you were in the insurance business?

A. No, sir, I lived there.

Q. How many years ago was that?

A. Fourteen years ago.

Q. Do you still maintain friendships with people in that district?

A. Yes, sir.

Q. Do you see them frequently?

A. I do.

Q. Have you, since the O'Dwyer investigation commenced, [fol. 1498] had discussions with reference to investigations in those particular areas?

A. Yes, sir.

Q. Have you heard mentioned the name of Harry (Pittsburgh Phil) Strauss?

A. Yes, sir, I have.

Q. Or the name of Harry (Happy) Malone?

A. Yes, sir.

Q. And that of Frank (The Dasher) Abbando?

A. Yes, sir.

Q. Did you, in that area, hear discussed the name of Lepke and Curley?

A. Yes, sir, I did.

Q. Without prolonging the examination too much, may I come to the point: Are there things you have heard discussed that have formed an impression in your mind?

A. Yes, sir, they have.

Q. Is that impression still retained?

A. Yes, sir, it is.

Q. Is it an impression which goes to the guilt or innocence of these defendants?

A. I would say to the guilt.

Mr. Turkus: The District Attorney has no recourse but to apply a challenge for cause.

The Court: Try the challenge.

(Louis J. Silberling, of 1929 Hutchison Court, Brooklyn, New York, was then duly sworn.)

By Mr. Turkus:

Q. Without repeating what you said to me, so the other jurors shall not hear it, would you make the same responses to me now if I were to put the same questions to you?

[fol. 1499] A. Yes, sir, I would.

Q. Were those answers frank and true?

A. Honest to God.

(Defense counsel: No questions.)

The Court: Challenge sustained.

The Court: The Court has been studying the possible psychological obstacle in the organization of a trial jury

in calling talesmen individually to the witness stand. That has been done because it is more or less customary in the trial of a capital case, but it is not required. In the interests of possible expedition the practice from now on will be to examine the talesmen in the jury box. Counsel will not be required to announce peremptory challenges until all of those in the box who have not been theretofore accepted will have been completely examined by both sides. That I think will be in the interests of expediency, because it will give counsel more of a chance for the proper deliberation and consideration of each individual case. There are quite a number of questions which may be collectively asked. Judge Talley suggested several days ago a plan which the Court said would be considered. I have considered it. I think Judge Talley's plan was to ask all members of the panel these collective questions. The objection [fol. 1500] to it was that members of the panel sitting in the back of the room were not segregated; they were sitting with spectators and relatives, etc., but with the gentlemen in the jury box it is practical. I think much time may be saved by collective questions being asked all at the same time.

SIDNEY J. FLAMM, No. 2620, residing at 122 Langham Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror, (the witness being in the box while questioned).

By Mr. Turkus:

Q. There are certain questions which have to be asked individually.

The Court: There is a long line of questions which have been asked of each man individually which might just as well be asked of the group.

Q. Mr. Flamm, you are listed as living at 122 Langham Street.

A. Yes, sir.

Q. What section of Brooklyn is that?

A. Manhattan Beach.

Q. Have you lived in that section of Brooklyn for a number of years?

A. Yes, sir.

Q. More than five?

A. Yes, sir.

Q. Prior to that where did you live?

A. Flatbush.

Q. You are listed as a director, without any further explanation. What is it you direct?

A. Director of Radio Station WMCA, until February of this year.

[fol. 1501] Q. What is your present connection?

A. Radio.

Q. In that respect do you act for a station or are you one who buys the time?

A. Buys the time.

Q. Do you put together various shows?

A. Yes, sir.

Q. That would be dramatizing of something to go along with a speech or act?

A. Maxwell House Coffee show on WHN.

Q. Your work does not embrace the part of dramatizing any news stories in certain areas?

A. No, sir.

Q. Has your business brought you in contact with anyone in the garment or clothing industry in Manhattan?

A. From time to time we have had clothing advertisements.

Q. Are they manufacturers of clothes in the garment and clothing district?

A. I don't believe so.

By the Court:

Q. You have advertised one on Lower Seventh Avenue, haven't you?

A. Yes, we did quite some time ago.

Q. Is he a manufacturer?

A. Retail clothing, I believe.

By Mr. Turkus:

Q. That was a concern that had a Chicago factory?

A. I would not know that.

By the Court:

Q. How long ago was that?

A. About five years ago.

By Mr. Turkus:

Q. Have you heard of the Amalgamated Clothing Workers of America in your business?

A. No, sir.

[fol. 1502] Q. Do you know any officials connected with that union?

A. No, sir.

Q. Have you had any other clothing outfit?

A. Yes, sir, Howard Clothing.

Q. Has that been recent?

A. In the last two years.

Q. So that part of the manner in which you make your livelihood is to deal with these various concerns and sell radio time for them?

A. Yes, sir.

Q. Those are the ones who hire you and pay you for your service?

A. Sometimes they pay the broker's commission.

Q. At any rate, part of your livelihood is determined by the good will of the accounts you have?

A. Yes, sir.

Q. Do you have any connection with any firm on the Brooklyn waterfront?

A. No, sir.

Q. Would there be any embarrassment on your part to serve in such a case as this because of your connection with these clothing concerns?

A. Not according to that.

Q. Is there some other reason you have which would make it embarrassing for you to serve?

A. I am arranging for a political talk for Judge O'Dwyer.

By the Court:

Q. Did you arrange that directly with Judge O'Dwyer?

A. No, sir, through Mr. Henry Ughetta.

Q. He is Judge O'Dwyer's representative?

A. I believe he is treasurer.

[fol. 1503] Q. He solicited the time?

A. That is right.

Q. Just the same as if you go to a shop and buy some goods, from you as the salesman?

A. No, sir, I am arranging time on various broadcasts.

Q. Do you go out and solicit these things?

A. No, sir, I do not solicit.

Q. The application came through to you to endorse?

A. Yes, sir.

Q. There is a lot of competition?

A. Terrific competition.

Q. Those who are getting the O'Dwyer order are pretty lucky?

A. It is considered very good business.

Q. By competition, I mean competition for time.

A. As time grows nearer election, the time for speeches, yes.

By Mr. Turkus:

Q. I believe you said it would be embarrassing for you to serve.

A. It would.

Q. You feel, because of the account you are handling, it would be more fitting and proper that you be not on the jury?

A. Yes, sir.

Mr. Turkus: I think so too. I don't want anybody in who would be embarrassed because of that kind of a connection.

The Court: You mean he is challenged?

Mr. Turkus: Yes.

The Court: Try the challenge.

(SIDNEY J. FLAMM, No. 2620, residing at 122 Langham Street, Brooklyn, New York, sworn.)

[fol. 1504] By Mr. Turkus:

Q. Prior to being sworn, I asked you certain questions and you made certain responses.

A. Yes, sir.

Q. Were those responses frank and true?

A. They were.

Q. Is it a fact that you are engaged in the business of selling radio time?

A. Yes, sir.

Q. And that you have a connection with the campaign of Judge O'Dwyer?

A. That is right.

Q. And under the circumstances would you feel embarrassed to sit as a juror in the case?

A. I would.

Q. Your mental state is it would not be proper or fitting for you to partake in the trial of a case in which Judge O'Dwyer, a District Attorney, is interested?

A. That is right.

Mr. Climenko: No questions on behalf of the defendants.
The Court: Challenge sustained.

(The talesmen then seated in the box were examined as follows:)

By Mr. Turkus:

Q. Mr. Haab, is that the correct pronunciation?

A. Yes.

Q. You are listed as living at 391 Warwick Street.

A. Yes, sir.

Q. What section of Brooklyn is that?

A. Brownsville-East New York.

Q. Have you lived there for a number of years?

A. Thirty-six years.

[fol. 1505] Your vocation is listed as that of clerk. By whom are you employed?

A. The Brooklyn Union Gas Company.

Q. Do you understand the nature of this charge?

A. I do.

Q. The defendants are charged with the crime of murder in the first degree. Is there anything about the nature of the charge, namely, the charge of murder in the first degree, which would impair your ability to serve as a juror in the case?

A. No, sir.

Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. No.

By the Court:

Q. Warwick Street is one of the stations on the elevated railroad?

A. On the Long Island Railroad it was.

Q. Isn't that where the Kendel building is?

A. No, sir, that is at Pennsylvania and Atlantic; I am ten blocks away.

Q. You are really in the East New York section, not in Brownsville.

A. Well, no, you may say it includes East New York and Brownsville, about ten blocks away from where the crime was committed.

By Mr. Turkus:

Q. At which branch are you employed?

A. At the present time the Nassau.

Q. Is that in Mineola?

A. No, sir, 1424 Fulton Street, near Classon Avenue.

Q. Since your name was selected as a prospective juror, [fol. 1506] particularly since you received your notice, did anybody speak to you about the case?

A. No, sir.

Q. Have you heretofore served as a juror of any type?

A. Yes, sir.

Q. In a criminal case?

A. No, sir, a civil case.

Q. In that case did the case go to the jury so that it received the judge's instruction on the law?

A. Yes, sir.

Q. So you are familiar with that type of case, in applying the law as given by the judge to the facts in a civil case?

A. Yes, sir.

Q. Well, in this kind of a case on trial there is a different rule. Will you, in this kind of a trial, which has different rules, apply the rules of law given by Judge Taylor, to the facts in this case?

A. Yes, sir.

Q. Do you have any connection with anybody in the garment center of Manhattan or in the clothing district?

A. No, sir.

Q. Or in the clothing trucking industry?

A. No, sir.

Q. Do you have any connection with anybody on the Brooklyn waterfront?

A. No, sir.

Q. Are you in sympathy with the enforcement of the Penal Law of the State of New York?

A. Yes, sir.

Q. There are nine lawyers representing the defendants in this case. I will repeat the names now so that the rest of the jurors will hear them. The defendant Buchalter is

represented by former Assistant District Attorney Bar-[fol. 1507] sbay and former United States Attorney Bertram Wegman, and Mr. Jesse Climenko. Do you know any of those three?

A. No, sir.

Q. Or anyone associated with them in the practice of law?

A. No, sir.

Q. Weiss is represented by former General Sessions Judge Talley, former Assistant District Attorney James I. Cuff, and former Assistant United States Attorney Murray Kriendler. Do you know any of those three or anyone connected with their law offices?

A. No, sir.

Q. The defendant Capone is represented by Sidney Rosenthal, Mr. Fischbein and Mr. Rosenberg. Do you know any of those?

A. No.

Q. Do you know intimately or closely any member of the bar who specializes in the defense of criminal cases?

A. No, sir.

Q. Do you know the District Attorney of the County, Mr. O'Dwyer, or any Assistant on his staff?

A. No, sir.

Q. Have you heard discussed with the other jurors the question of accomplice testimony?

A. Yes, sir.

Q. Do you find any fault with the prosecutor who, in order to solve a murder, breaks a case from the inside and accepts the testimony of co-participants in the crime, commonly known as accomplices?

A. No, sir.

Q. Do you find any fault with the prosecution of an indictment wherein that type of testimony is employed?

A. No, sir.

Q. Will you, in weighing the believability of accomplice [fol. 1508] testimony, look at every circumstance in connection with it?

A. Yes, sir.

Q. Will you look at every black mark there may be against the accomplice by way of background, past criminal association, and vicious or immoral criminal acts he may have committed and everything that may be brought

out in the testimony in derogation of that type of individual? Will you consider it in weighing his believability?

A. Yes, sir.

Q. Will you, in looking the case over, apply your mental faculties to finding out, regardless of his motive or of the things he has done in his life and all the immoral acts he has committed, is he telling the truth about these defendants in connection with their participation as a group in the murder of Rosen?

Mr. Climenko: I object to that as improper. He is asking them to disregard the motive. I assume, under the instructions of the Court he will be instructed regarding that.

The Court: Objection is overruled.

Mr. Climenko: Exception.

Q. I will ask it over again: Will you, in considering the believability or the credibility of an accomplice, look into everything there is? For example: Has he committed other crimes? Has he been associated with—

The Court: That is really a question that should be [fol. 1509] asked by the defense. I have heard you question a great many times, and it impresses me as tending to confuse the juror when asked by the District Attorney, because it is really a question that concerns the interests of the defense and not of the prosecution.

Mr. Turkus: The interests of the prosecution.

The Court: I will not argue any further on that. If you want to ask it, ask it.

Q. Will you, in making an examination of the testimony of an accomplice, use your faculties to find out, Is he telling th truth about the group participating with himself and the defendants in a murder charge?

Mr. Cuff: A situation develops that makes it more difficult to hear the answers of the prospective talesmen. I think the examination would be better if it were held in the chair.

The Court: Listen more attentively.

Mr. Cuff: All those questions could be asked in general of all the jurors, as your Honor suggested.

The Court: That is a collective question. General questions should be asked of all, collectively.

Q. Will you take the law in its every aspect from Judge Taylor?

A. Yes, sir.

The Court: You are losing time.

Mr. Turkus: I don't understand what I am supposed —
[fol. 1510] The Court: You know, because you have tried a great many cases. It is the usual practice, departed from only on the concession by the Court in capital cases. In about three hundred capital cases I tried it was the usual practice, and I departed from it against my own inclination because it was the desire of counsel.

By Mr. Turkus:

Q. Will you, if selected as a juror, listen to fair argument of the other jurors in the case?

A. Yes, sir.

Q. Will you, by your verdict, endeavor to do justice in the case?

A. Yes, sir.

Q. If you are satisfied, from all the evidence in the case, that the accomplice or co-participant in the crime is not only telling the truth about the group participation of the defendants and himself in the commission of the murder, and you believe that beyond a reasonable doubt, would you hesitate to reflect that in your verdict?

A. No, sir.

Q. Is there any reason which I have not yet elicited by questioning which would impair your ability to be a fair, sensible, ordinary juror in behalf of the People of the State of New York and the defendants at the bar of justice?

A. I am afraid, yes, my contact in the Brownsville section with the merchants of Brownsville.

Q. Are there things you have heard in that area?

A. That is right.

[fol. 1511] Q. Assuming Judge Taylor were to charge you that guilt or innocence of a defendant in a criminal case is to be decided solely from the evidence in the case, would you follow that instruction of law?

A. I would try to do so.

Q. Assuming Judge Taylor were to tell you that all of the defendants at the bar, under our law, no matter who they are, are, according to our principles of law, entitled to a fair trial, and that their guilt must be established

beyond a reasonable doubt by believable evidence, would you follow those instructions?

A. Yes, sir.

Q. Would you endeavor conscientiously to apply those instructions to the facts in this case?

A. Yes, sir.

Q. Assuming you are instructed by Judge Taylor that the defendants have no burden of proof, they may sit mute if they wish and say to the District Attorney, in effect "We are sitting still and we are leaving it to you to comply with the law and establish guilt beyond a reasonable doubt, otherwise we want to be acquitted." Will you follow those instructions of law as charged you?

A. Yes, sir.

Q. Will you apply every instruction of law that the judge gives you with respect to the legal and constitutional rights of the defendants at the bar of justice, and conscientiously endeavor to apply the same to the facts in this case?

A. Yes, sir.

Mr. Turkus: There is no challenge for cause of Mr. Haab. Shall I go right down the line and examine the other tales-[fol. 1512] men?

The Court: Yes.

DAVID M. DAY, No. 2627, of 71 Willow Street, Brooklyn, New York, a talesman, was then examined as to his qualifications.

By Mr. Turkus:

Q. 71 Willow Street, is that the correct address?

A. Yes, sir.

Q. That is on Brooklyn Heights?

A. Yes, sir.

Q. Have you lived in that section for a number of years?

A. About ten years.

Q. You are listed on this jury as a clerk. By whom are you employed?

A. The Central Hanover Bank.

Q. Have you been a bank clerk for a number of years?

A. Yes, sir, about twelve years.

Q. You heard the questions I put to Mr. Haab with regard to possible connection or association with anyone in

the garment or clothing trades in Manhattan or the clothing trucking industry, the Brooklyn waterfront, Brownsville, and the East New York sections?

A. Yes, sir.

Q. Have you any such contact?

A. No, sir.

Q. Have you heretofore served as a juror in any type of litigation?

A. Just in civil cases.

Q. The law is different in criminal cases. Will you follow the instructions in respect to the law from Judge Taylor regarding criminal cases?

A. Yes, sir.

[fol. 1513] Q. You heard some of the things I have stated to Mr. Haab that would undoubtedly be charged by Judge Taylor in his charge to the jury in this case. Will you endeavor conscientiously to apply the charge on the law to the facts in this case?

A. Yes, sir, I will.

Q. With respect to the testimony of a co-participant or an accomplice, have you any prejudice or bias against the prosecutor for solving a murder by employing the use of that kind of testimony?

A. No, sir.

Q. Do you find any fault with or have you any prejudice against the prosecution of an indictment wherein that kind of testimony is employed?

A. I don't follow you.

Q. Would you have any prejudice against the prosecution for using that kind of testimony on the trial?

A. No, sir.

Q. You heard certain tests that were spoken of to Mr. Haab in connection with the believability of that type of witness, for example, having been engaged in prior crimes?

A. Yes, sir.

Q. Will you consider everything you are supposed to consider in consonance with the Judge's charge on the law in regard to the believability of accomplices?

A. Yes, sir.

Q. Will you always have in mind and keep in your mind what you are here for, to find out, Is this accomplice telling the truth about these defendants as a group and their participation with him as a group in the murder charge here?

Mr. Climenko: I object to the question.

[fol. 1514] The Court: Objection overruled.

Mr. Climenko: Exception.

Q. The charge here is murder in the first degree, that is the killing of Joseph Rosen by shooting him. The proof in a murder case does not show that every man pulled the trigger. It may show other men had different parts in the commission of the murder.

A. Yes, sir.

Q. By a group of men, a conspiracy, where they get together to kill a man, each one to play his part?

A. Yes, sir.

Q. Will you, in looking his testimony over and applying all these tests, look to see if this participant in the crime is telling the truth about the group or participation in pursuit of the conspiracy to kill Rosen—do you understand me?

Mr. Climenko: I object. It employs the use of the word "conspiracy."

The Court: It is a question of law. Objection sustained.

Q. Will you, in looking over the testimony, look to see is the accomplice or co-participant in the commission of the crime telling the truth about his confederates?

A. Yes, sir.

Q. Will you have that in mind when you are weighing the case?

A. Yes, sir.

Q. Is there anything as you sit here that you can think of why you cannot be a fair juror to The People of the State in the determination of this issue as to the guilt or [fol. 1515] innocence of these defendants?

A. No, sir, there is not that I know of.

Q. Will you, if selected, conscientiously endeavor to arrive at a verdict in consonance with justice?

A. Yes, sir.

Q. Will you reason the case out with common sense and understanding with the other jurors?

A. Yes, sir.

Q. And should I establish to your satisfaction, Mr. Day, that these defendants are guilty of murder in the first degree, and satisfy you beyond a reasonable doubt, will you say so in your verdict?

A. Yes, sir.

Q. Without any fear, hesitation, or reluctance?

A. I don't like the use of the word "reluctance." I would say without any fear or hesitation.

Q. But you will do your duty as a juror?

A. Yes, sir.

Q. What I am concerned with chiefly is will you take your job and do it as a juror if you are satisfied they are guilty?

A. Yes, sir.

Q. There is one point I did not cover with you and Mr. Haab. It has been brought out by one of the lawyers for the defendant Buchalter that he has previously been convicted of a crime and is now serving a jail sentence of a substantial number of years. Would that cause either one of you to relax your duty as a juror on this charge of murder?

Talesmen Haab and Day: No, sir.

Q. Would either one of you deviate from a proper decision of the case because of his present incarceration?

[fol. 1516] Talesmen Haab and Day: No, sir.

Q. Mr. Pinto, are you related to Judge Pinto?

A. No, sir.

Q. You are listed as living at 1121 Avenue Y.

A. Yes, sir.

Q. In what section is that?

A. Sheepshead Bay.

Q. You are listed on this trestle board as a switchman.

A. Inside man in the central office of the New York Telephone Company.

Q. Have you been employed by the Telephone Company for a number of years?

A. Eighteen years.

Q. Is switchman some sort of engine work?

A. It is maintaining equipment in the office, to clear up trouble they have with dials.

Q. At any rate, that job is work requiring skill in mechanics in the telephone system and familiarity with the various apparatus and equipment of the company?

A. Yes, sir.

By the Court:

Q. That is in the Sheepshead Bay section, Avenue Y?

A. Yes, sir.

Q. Just one block from Coney Island Avenue?

A. Yes, sir.

By Mr. Turkus:

Q. Is that anywhere near Coney Island, Stillwell Avenue?

A. No, sir, that is in Coney Island.

Q. Have you heard the questions, Mr. Pinto, about contact in Brooklyn and in East New York?

A. Yes, sir.

Q. Does that pertain to you? Have you any such contacts?

[fol. 1517] A. No, sir.

Q. With respect to the garment or the clothing district?

A. No, sir, I have no connection.

Q. With respect to the Brooklyn waterfront?

A. No, sir.

Q. Did your work as switchman require special study of equipment?

A. Yes, sir, you have to be trained in that particular work.

Q. You have better than the average high school education?

A. I would not say that.

Q. You have had a specialized education?

A. In that particular branch of telephone office where I work.

Q. That would be commonly called vocational training?

A. Yes, sir.

Q. Since your name appeared on this panel as a prospective juror, specifically, since you got your slip, did anybody speak to you about the case?

A. Only me and my family, my wife, that is all.

Q. Was that in connection with the possibility of service in the case?

A. Yes.

Q. Have you lived in that neighborhood for a number of years?

A. Going on eight years.

Q. Before that where did you live?

A. In Bensonhurst.

Q. How long did you live in Bensonhurst?

A. All the rest of my life.

Q. Are you related to a lawyer named Pinto?

A. No, sir.

[fol. 1518] Q. You have no connection with the legal branch of the Pinto family?

A. No, sir.

By the Court:

Q. Whereabouts in Bensonhurst?

A. I lived between 17th and 18th Avenues before I got married and when I got married I lived on 66th Street between 16th and 17th.

Q. (Mr. Turkus): I spoke about certain names——

Q. That is the section where the Long Island Railroad cuts through?

A. No, sir.

Q. Homewood?

A. Homewood, that is right.

Q. And the New Utrecht Avenue line runs through it?

A. Yes, sir, at 62nd Street and New Utrecht.

Q. How far from that section is the Long Island Railroad cut?

A. It runs all the way down towards Bay Ridge, 8th Avenue at 62nd Street—62nd and New Utrecht.

By Mr. Turkus:

Q. I mentioned to the other prospective talesmen certain names. For example, I mentioned the name of Bruno Belia, Tosca and Bellanca, and Salvatore Marazzano and others. Are any of those names familiar to you?

A. No, sir.

Q. Were any of the names I have read off before or mentioned at any time during the time you have been in the box, at all familiar to you?

A. No, sir.

Q. Is the name Capone a familiar name to you?

A. No, sir.

Q. Or the name of Jesualdo Capone, is that name familiar [fol. 1519] to you, or Zubatch or Tucherman?

A. No, sir.

Q. Did you hear the questions put to Mr. Haab and Mr. Day with respect to accomplice testimony?

A. Yes, sir.

Q. Have you any definite feeling on it other than they have?

A. No, sir.

Q. Will you, if selected, apply your mental faculties to ascertain whether the accomplices are telling the truth, the truth about their participation with confederates in the case?

A. Yes.

Q. Is there anything I have not brought out by questioning so far which goes to your ability to serve as a juror in this case, fair to the People of the State of New York and to the defendants on trial?

A. No, sir.

Q. Have you heard any discussions at all about the O'Dwyer investigation?

A. No, sir.

Q. Have you read newspaper articles in connection with it?

A. I heard more here than I ever knew about it.

Q. Of course, what you heard here was only a discussion with counsel.

A. That is all I know about it.

Q. Will you listen, if selected, to the evidence, with the idea in mind of finding out were these men confederates in the killing of Joseph Rosen as charged?

A. Yes, sir.

Q. Will you use common sense in finding that out?

A. Yes, sir.

Q. Assuming I were to establish to your satisfaction that the defendants at the bar are guilty of murder in the [fol. 1520] first-degree and you were satisfied of that beyond a reasonable doubt, would you say that in your verdict?

A. I would.

Q. Would you have any fear in saying so?

A. No, sir.

Q. You would have no hesitation?

A. No, sir.

Q. Did you hear me discuss with Mr. Haab and Mr. Day a point that was brought out by one of the lawyers for

Mr. Buchalter, that he was previously convicted of some crime?

A. Yes, sir.

Q. Would the fact that he has been previously convicted of past crimes and is now serving a penalty for the conviction, would that cause you to relax your duty or deviate from a proper decision in this case?

A. No, sir.

Q. With respect to allocation of evidence, I will take that up together: Will you apply the evidence to the defendants in accordance with the law Judge Taylor gives you?

A. Yes, sir.

Q. If obviously the testimony fails as to one defendant; then you apply it to them specifically, do you?

A. Yes, sir.

Q. If by common sense and logic and in consonance with the Judge's charge, the testimony applies to two or three defendants, will you apply it that way?

A. Yes, sir.

Q. Something has been said about the fact that defendants' lawyers each have a summation, so in all they will have three summations. It may be they may repeat or reiterate arguments—I don't say they will do it intentionally—they have a right to handle their case any way they see fit—if you may hear the same argument three [fol. 1521] times, may I proceed with the understanding that if repetition occurs three times it will not increase the force of the argument three times?

A. That is right.

Q. Can I pass along with the understanding that there is nothing by way of any reading matter or what you have heard nothing by way of any acquaintance or connection that would permit you to render a verdict not in consonance with justice?

A. Yes, sir.

Q. And if your mind tells you the verdict should be Guilty, you will not be afraid to say so?

A. No, sir.

ARTHUR HELTZER, residing at 2387 Ocean Avenue, Brooklyn, New York, was interrogated as to his qualifications.

By Mr. Turkus:

Q. You are listed at living at No. 2387 Ocean Avenue.

A. Yes, sir.

Q. Is that a part of Sheepshead Bay?

A. I guess it is. It is between Avenue S and T.

Q. Have you lived in that district for a number of years?

A. Two years.

Q. Prior to that where did you live?

A. On East 23rd Street.

By the Court:

Q. You are really in the Kings Highway section?

A. Yes, sir.

Q. You use the Kings Highway station?

A. Yes, sir, Kings Highway or Avenue U.

[fol. 1522] By Mr. Turkus:

Q. Your business is listed as that of manager.

A. I am manager of a retail jewelry store.

Q. Where is it located?

A. 480 Fulton Street, Brooklyn, right next to Loeser's.

By the Court:

Q. That is Peter's?

A. Yes, sir.

By Mr. Turkus:

Q. Have you been in the jewelry business for a number of years?

A. Yes, sir.

Q. More than five?

A. Oh, yes.

Q. Has it been all your business experience?

A. Well, pretty near.

Q. How long have you been with Peter's?

A. Twelve years.

Q. Have you heretofore served as a juror in any kind of a case?

A. No, sir.

Q. You heard the questions I put to Mr. Haab and Mr. Day and Mr. Pinto, about taking the law from Judge Taylor?

A. Yes, sir.

Q. Will you, if selected, take the law only from the trial judge and from nobody else?

A. Yes, sir.

Q. Will you, if selected, conscientiously endeavor to apply those principles of law to the facts in this case?

A. Yes, sir, I will try.

Q. You heard me speak about connections in various industries, the garment industry, the clothing industry, and [fol. 1523] the clothing truckers' industry. Have you any connection with any of those three industries or with persons engaged in those districts where the manufacture and dealing in clothing is?

A. None.

Q. With respect to the Brownsville-East New York—and Brooklyn waterfront sections, have you any connections there of any kind?

A. No, sir, none whatever.

Q. Have you had any in the past?

A. None whatever.

Q. I take it by now you are familiar with the discussion of the facts with respect to a case which rests in part upon the testimony of an accomplice?

A. Yes.

Q. Do you understand an accomplice to be one who participates in a crime with confederates?

A. Yes, sir.

Q. Will you, if selected, apply every common sense and reasonable rule to the believability of that type of an individual? Here is what I want to find out: Do you start off with any inherent prejudice against the use of that type of testimony, which would cause you to reject it under any circumstances?

A. There is a possibility.

Q. We have to know better than that. What is your present state of mind? Do you feel that if the case rests upon the testimony of an accomplice you would reject it no matter how it was submitted?

A. I may. It is a question whether I can take the word of the accomplice.

Q. I don't understand you exactly, but we will try to [fol. 1524] straighten it out. Of course, we all expect that you will view the testimony of an accomplice with a great deal of caution. Is your state of mind such that you could never believe that kind of a person, no matter what the circumstances might be?

A. I would not say definitely no; there is a possibility. I can listen to reason, if that is what you mean.

Q. I know you are trying to be fair.

A. There is one reason why—

Q. (The Court): Cannot you put that aside?

A. To be very honest with you, no, sir.

By the Court:

Q. Cannot you concentrate on this case?

A. No, I cannot.

Q. Your jewelry store will be there when you get back.

A. An awful lot depends upon me.

Mr. Turkus: I will apply a challenge.

The Court: Try the challenge.

ARTHUR MELTZER, residing at 2387 Ocean Avenue, was duly sworn on the trial of the challenge.

By Mr. Turkus:

Q. When you were sitting in this jury box Judge Taylor asked you certain questions and you made certain responses.

A. Yes, sir.

Q. If you were to be asked the same questions by me as you were asked by Judge Taylor, would you make the same responses?

A. Yes, sir.

[fol. 1525] Q. Would those responses be true?

A. Without question.

Q. And frankly, too?

A. Yes, sir.

Q. Is your state of mind such that you cannot listen to the evidence in the case and listen to it as a juror because of something you have on your mind?

A. Yes, sir.

By the Court:

Q. Is it a fact that because of your desire to get back to the jewelry store and supervise the reappraising of your stock of merchandise due to the new Federal tax, that you sort of stretch the point as to your alleged prejudice against the defendant?

A. No, sir, that is not the main reason. I have nothing to do with bias. There is a tremendous amount of work that has to be done before the holidays.

Q. That does not go to your ability to sit and listen?

A. I haven't got a free mind. My mind is not on this case at all.

Q. You mean you are so flustered you cannot listen?

A. Without question.

Defense Counsel: No questions.

The Court: Challenge sustained.

HERMAN E. SELIG, No. 2784, of 702 Forty-fourth Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. The trestle board lists your address as 702 Forty-[fol. 1526] fourth Street. That is Seventh Avenue and 44th Street?

A. Yes, sir, right at the corner.

Q. What is that, Bay Ridge or Borough Park?

A. Bay Ridge.

Q. You are listed as being a sales manager?

A. Yes, sir.

Q. Supervisor?

A. Yes, sir.

Q. What is the nature of your vocation?

A. Life insurance.

By the Court:

Q. What is the name of the company?

A. The John Hancock Insurance.

Q. Do you collect in the industrial line?

A. No, sir, there are agents that do the collecting.

Q. You are the sales manager. What does that mean?

A. I am the supervising assistant manager, not the sales manager?

By Mr. Turkus:

Q. What are your duties?

A. Supervising eight or nine men.

Q. In other words, your line of business brings you in contact with various people throughout Brooklyn?

A. Yes, sir.

Q. You assist, with other salesmen who procure life insurance, in closing deals?

A. Yes, sir.

Q. If a man is closing a deal and cannot put it over, you go in to help him close it out?

A. Yes, sir.

Q. Are you brought into contact with persons in Brownsville or the East New York area?

A. Very seldom.

Q. Do you have any contact there by way of social or business connections, personally?

A. No, sir.

[fol. 1527] Q. Have you had any in the last five years?

A. Two or three.

Q. Two or three social?

A. No, sir, business connections.

Q. Have they all been in connection with the selling of policies?

A. Yes, sir.

Q. Do you sell industrial or life insurance?

A. Straight life—mostly ordinary life. We do not make a practice to go out and solicit industrial insurance.

Q. You do not go out for the collection of any premiums?

A. Only when the man is away on vacation or the inspector is gone.

Q. On those two occasions you had business connections in Brownsville and the East New York area, have they been in the last two years?

A. Yes, sir. You said in the last five years. I said in the last two or three years.

Q. Have you had any connection in the garment trade, the clothing industry, did you ever have such a connection?

A. Not in the last twelve years.

Q. Were you in the business twelve years ago?

A. No, sir, I was selling garments.

Q. Have you heard the names of Lepke and Gurrah?

A. Yes, sir, I have.

Q. Over a period of years?

A. Yes.

Q. Did those names leave an impression with you?

A. Yes, sir, the names do leave an impression.

[fol. 1528] Q. If the name of Lepke applies to a defendant in this case, would it leave some impression with you?

A. None whatever.

Q. In other words, can you decide the guilt or innocence of these defendants on the evidence in this case?

A. Yes, sir.

Q. And free of any concept you may have gathered about the names of Lepke and Gurrah?

A. Yes, sir.

Q. As a result of what experience you have had in the district, are you familiar with the name of Murray Weinstein, manager of the local Cutter Union, affiliated with the Amalgamated Garment Workers of America?

A. No, sir.

Q. Or with Samuel Katz, who also holds an office with that local, affiliated with the Amalgamated?

A. No, sir.

Q. From time to time I have mentioned witness's names. For example, the name of Philip Orlofsky, at one time manager of a union affiliated with the Amalgamated. Is that a familiar name?

A. No, sir.

Q. Are you connected with any union official in the clothing trade or the clothing trucking industry?

A. No, sir.

Q. Do the names of Bellanca and Belia and Tosca mean anything to you?

A. No, sir.

Q. Or the name of Hymie (Curley) Holtz?

A. No, sir.

Q. I have from time to time mentioned the names of the nine lawyers who represent these defendants. Are those names familiar to you?

A. No, sir.

Q. Do you know any of those nine?

A. No, sir.

[fol. 1529] Q. Do you know anyone associated with them in the practice of law?

A. No, sir.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. No, sir.

Q. Have you heard some discussion about accomplice testimony?

A. Yes, sir.

Q. Have you any bias or prejudice against the prosecutor of a county who, in order to solve a murder, employs the use of accomplice testimony against the other perpetrators of a crime?

A. No, sir.

Q. Do you find any fault with the prosecution of an indictment on the sworn testimony of an accomplice used against the other perpetrators?

A. No, sir.

Q. Will you apply all the tests that Judge Taylor says should be applied to the believability or credibility of that type of witnesses?

A. I will.

Q. You will be asked by the defense lawyers whether you will not consider this factor and that factor—you have heard the factors they want considered. Will you do that and consider all factors that should be properly considered in conjunction with the believability of accomplice witnesses?

A. Yes, sir.

Q. Will you by the same token employ your faculties to find out is this accomplice telling the truth about the co-perpetrators of the crime?

—A. Yes, sir.

Q. Will all the tests you apply be for the purpose of [fol. 1530] finding out does he tell the truth about the group participating in the commission of the crime?

A. Yes.

Mr. Climenko: I object on the same ground.

The Court: Objection overruled.

Mr. Climenko: Exception.

Q. Is there anything I have failed to urge by questions, which would go to your ability to try this case with justice and fairness?

A. No, sir.

Q. Did you hear me discuss with Messrs. Haab, Day and Pinto about the fact that one of the lawyers for Buchalter brought out that he had been convicted of past crimes and as a result of his conviction has been sentenced to jail for a substantial number of years?

A. Yes, sir.

Q. Would you relax your duty as a juror in this murder case because he has been punished for crimes he has committed in the past and is now serving a jail term?

A. No, sir.

Q. Would that deviate from a proper result, his past conviction and prison sentence?

A. No, sir.

Q. Will you devote your faculties to find out whether or not all these three defendants were part and parcel of a group that killed Joseph Rosen?

A. Yes, sir.

Q. And should the prosecutor satisfy you beyond a reasonable doubt that Buchalter, Capone, and Weiss are three guilty men, guilty of murder in the first degree, will you say that in your verdict?

A. Yes, sir.

[fol. 1531] Q. Will you have any fear in saying that?

A. No, sir.

Q. Will you have any hesitation in pronouncing your verdict?

A. No, sir.

Mr. Turkus: No challenge for cause.

Mr. Barshay: Mr. Haab, I heard you say that your contact with merchants in Brownsville may prejudice you in this case. Maybe you did not use that language, but that was your intent?

The Talesman: Yes, sir.

By Mr. Barshay:

Q. I take it that prejudice will go to the defendants?

A. It may go to either side.

Q. Mr. Turkus is very able to take care of his side, and I will do my best for my side, but it may prejudice you with respect to our defendants?

A. Yes, sir.

Q. And that prejudice, or the possibility of it, is now in your mind?

A. There is a possibility.

Q. And it may require evidence to remove that prejudice?

A. That is right.

Q. Unless such evidence is furnished to remove the prejudice, it may remain?

A. That is right.

Q. You are not able to lay it aside?

A. No, sir.

Mr. Barshay: Challenge for cause.

The Court: Try the challenge.

GEORGE P. HAAB, No. 2623, of 391 Warwick Street, Brook-
[fol. 1532] lyn, New York, was duly sworn on the challenge.

By Mr. Barshay:

Q. Mr. Haab, now that you are under oath, would you make the same answers to the questions as you did when you were asked and were not under oath?

A. Yes, sir.

By Mr. Rosenthal:

Q. The impression you have, which you stated to Mr. Turkus and Mr. Barshay, who just addressed you, is of such a nature that it goes to the guilt or innocence of the defendants in this case; is that correct?

A. Yes, sir.

Mr. Rosenthal: No other questions.

Mr. Turkus: No questions.

The Court: Challenge sustained.

DAVID M. DAY, No. 2627, was then examined by Mr. Barshay as to his qualifications.

By Mr. Bashay:

Q. Have you ever had any prior jury service?

A. Yes, sir, in civil cases.

Q. Recently?

A. About two or three years ago.

Q. Have you ever been a Grand Juror or a Federal juror?

A. No, sir.

Q. Have you been called, without serving, as a special juror?

A. No, sir.

Q. Have you read about this case?

A. Yes, sir, news items.

Q. Have you read about it since you were called?

A. No, sir.

[fol. 1533] Q. Have you formed any impression by virtue of what you have read?

A. No, sir, not in regard to the defense.

Q. Nor to their guilt or innocence?

A. No, sir.

Q. Have you always kept in mind that they are presumed to be innocent under the law?

A. Yes, sir.

Q. And you agree with that?

A. Yes, sir, I agree with that sincerely.

Q. While sitting here being questioned have you formed any impression in this case?

A. Not in regard to the defendants.

Q. In regard to anything?

A. Well, yes, I have formed my impression.

Mr. Turkus: I object to this. Nobody can sit through this without getting some impression.

Q. Have you formed an impression with regard to the case?

A. No, not as regards the innocence or guilt of the defendants.

Q. To be frank, tell us, what impression did you form?

A. Just a general impression that it takes a long time to get along with this thing and it goes along and seems to go through a lot of rigamarole.

Q. You are not charging us with that?

A. No, sir, I am not charging one way or the other; it would have no bearing on my part in the case if I was chosen as a juror.

Q. I take it you understand that we believe we have certain rights and Mr. Turkus believes he has certain rights.

A. Yes, sir, I can appreciate you gentlemen must be very careful.

[fol. 1534] Q. In other words, you understand that a person's life is entrusted to my care?

A. I appreciate that from the defense point of view.

Q. Other than that, I take it you would be absolutely free of bias or prejudice of any kind, nature, or description?

A. Yes, sir, that is the way I feel.

Q. Our clients start off at scratch?

A. Yes, sir.

Q. You have already said you know none of the personnel or the defendants' counsel?

A. No, sir.

Q. I take it that the title that one has will have no bearing in this case, an ex-judge *an* an ex-United States District Attorney?

A. No, sir.

Q. No more than if Mr. Turkus and Mr. Klein were both judges?

A. No, sir.

Q. Both gentlemen who participated in the practice of criminal law. I opposed them when they represented defendants. That does not make any difference?

A. No, sir.

Q. The reading of all the other names Mr. Turkus read or recited or mentioned, they have nothing to do with the case unless from the witness stand they testify their names were connected with this case itself?

A. That is right.

Q. The fact our clients come here into court with so many people around them, that is a matter of procedure; it has nothing to do with the merits?

A. It has nothing to do with the case.

Q. You believe the Grand Jury can indict innocent men?

[fol. 1535] A. I think that is possible.

Q. You will agree to give our clients the presumption of innocence?

A. Yes, sir.

Q. If a man comes in here and declares himself and says, "Mr. Buchalter is my accomplice"—our plea denies not only our participation in this case or that we are an accomplice to any one—if that particular person whose name I have read, whose name is Mr. Sholem Bernstein, so states, will you take into consideration in deciding

whether or not he is an accomplice to us, that he never even saw or spoke to the defendant in his life?

Mr. Turkus: That specific question asks for an advanced opinion.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Then I will ask, if we prove to you that Mr. Sholem Bernstein has been a piece man all his life and declares himself in other people's business, and he is now declaring himself as our accomplice, and you find that fact is not so at all from the evidence, you will take that into consideration?

Mr. Turkus: I object to that.

The Court: Sustained.

Mr. Barshay: Exception.

Q. In other words, the mere fact that he says or any- [fol. 1536] one says they are accomplices to Mr. Buchalter, that will not make it so?

A. No, sir.

Q. Especially when you shall consider, if it comes from the witness stand, that there was an occasion when he denied he had anything to do with this matter at all?

Mr. Turkus: I object.

The Court: Sustained. You cannot question as to a reaction concerning a specific witness.

Mr. Barshay: Exception.

Q. You will take all things into consideration that we shall endeavor to get out of Mr. X, Y, or Z, whoever it may be?

A. I don't get you.

Q. You will consider everything that is brought forth from these witnesses, whether they claim they are accomplices or corroborating witnesses or not; we will try to draw the truth from them, and you will consider those things which we succeed in drawing from them, won't you?

A. I will carefully consider any evidence presented by an accomplice. I will carefully weigh them as to their credibility.

Q. In other words, you will search for the truth?

A. Yes, sir.

Q. And the raising of their hand is no warranty for their telling the truth?

A. No, sir.

Q. You look at the business side they have, people who apply for credit?

A. Not directly.

[fol. 1537] Q. You know the experience you would have if you had a person apply for credit?

Mr. Turkus: Object to the question.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Mr. Turkus himself asked you if you would use your common sense and understanding and business experience when you come to accept or reject a person's testimony.

A. Yes, sir.

Q. And that is what I want you to do. You will use what experience you have had or may have had when a person on the stand says he is a witness in this case and is applying for credit from you: Is it believable or not?

A. Yes, sir.

Q. And if you find he is not worthy of credit by virtue of his past or because he has a motive or interest in giving such testimony, you will consider it before you give him any credit?

A. Yes, sir, as I said before I will weigh carefully any evidence presented, the way it is presented, how it is presented, the person's background, and every other consideration. I would consider any sort of evidence.

Q. And should you decide he is not worthy of belief, you will reject it?

Mr. Turkus: I object. The juror has already indicated that he will consider everything about every piece of testimony in the case.

The Court: Objection sustained.

[fol. 1538] Mr. Barshay: Exception.

Q. You will make every effort to make a search for the truth?

Mr. Turkus: Objected to as already answered and repetitions.

The Court: Objection overruled.

A. Yes, sir.

Q. And that will go too with those who say they have evidence for you which will tend to connect the defendants with the commission of the crime?

A. Yes, sir.

Q. While we are being tried with others, we do not hold out ourselves as being part of any group. Groups have nothing to do with it unless and until the testimony which is believed by you connects Mr. Buchalter with the commission of this crime.

A. I understand.

Q. Being a member of a group has nothing to do with this case.

A. I understand.

Q. His connection will have to be proven by competent and believable evidence?

A. Yes, sir.

Q. We are not trying him as a member of any group.

Mr. Turkus: I object. He cannot ask the witness that.

Mr. Barshay: I will reframe the question.

Q. You understand he is being tried as an individual?

A. Yes, sir.

Q. And he has a right to a trial and the consideration [fol. 1539] of evidence against him separate and apart from the other defendants?

A. That is right; each defendant must be considered separately.

Q. You will consider the evidence, if any, against Mr. Buchalter solely which tends to prove some connection on his part?

A. Yes, sir.

Q. You will not borrow or use evidence given against one defendant and apply it to another defendant?

A. No, sir.

Q. That is the case as to all defendants?

A. Yes, sir.

Q. If the evidence does not convince you beyond a reasonable doubt with respect to Mr. Buchalter's guilt, you will have the courage to say "Not guilty"?

A. Yes, sir.

Q. There is no doubt about it?

A. No doubt about it.

Q. So far as you are concerned, Mr. Day, Mr. Buchalter can place his legal rights in your keeping?

A. I believe so.

JOSEPH PINTO, No. 2629, a talesman, was then examined from the jury box as to his qualifications.

By Mr. Barshay:

Q. Mr. Pinto, have you had any prior experience?

A. I have had, in civil cases, but not in criminal cases.

Q. Have you read about the case?

A. Only since I have been here, about the trial.

Q. Have you accepted what you read as true?

A. I have not read anything about this particular murder case; only what is going on in here.

Q. Have you formed any impression with respect to the defendants' guilt or innocence?

A. No, sir.

Q. So your mind is absolutely free of bias and prejudice?

A. Yes, sir.

Q. We can start off from scratch?

A. Yes, sir.

Q. As does Mr. Day, do you believe in the presumption of innocence?

A. Yes, sir, until they are proven guilty.

Q. You will not require the defendants to prove their innocence?

A. No, sir.

Q. Or explain any charge against them at all?

A. No, sir.

Q. The Court will instruct you in that respect?

A. Yes, sir.

Q. If we do not call a witness, if we do not explain it here, you cannot charge that against us?

A. No, sir.

Q. Will you do that?

A. Yes, sir.

Q. No doubt about it?

A. No, sir.

Q. So, if anyone— No one has brought forth to your mind any reason why you cannot be a juror here?

A. Not as I know of.

Q. Will you render a verdict separately in each case on the evidence that is presented with respect to each defendant?

A. Yes, sir.

Q. On the question of accomplice, will you use the care and caution that is required of you if His Honor shall charge you, before accepting it?

A. Yes, sir.

Q. I do not have to repeat the details; I have already [fol. 1541] mentioned them to the other gentlemen.

A. No, sir.

Q. And if there is one reason for doubt which arises out of the evidence, you will give it to the defendants?

A. If the Court so charges; I will take it from the Judge.

Q. Take it from me, you will take it from him.

A. I don't know, I would have to take it after I was charged what to take and not to take; I don't know nothing about it.

Q. If you should find I am right in saying the Judge will charge that if there is one reason for doubt which arises out of the evidence, you must, you have no choice?

A. Yes, sir.

Q. If the evidence is subject to two interpretations, innocence and guilt, and the Court shall tell you you must give it the innocent one, you will do that?

A. Yes, sir.

Q. And if there is a doubt in your mind as to which you shall accept, you will still give the benefit of it to the defendant, because the Court shall so charge you?

A. Yes, sir.

HERMAN E. SELIG, No. 2784, a talesman, was then examined by Mr. Barshay as to his qualifications from the jury box.

By Mr. Barshay:

Q. May I know the names in your company?

A. Cohen & Feldman they are the dealers.

Q. You said you heard the names that Mr. Turkus mentioned. Have they formed an impression upon you at all?

A. No.

[fol. 1542] Q. That has nothing to do with the case?

A. No, sir.

Q. Have you read about it?

A. Yes, sir, I read about it.

Q. Have you formed an opinion by virtue thereof?

A. No, sir.

Q. Has anybody spoken to you about this case?

A. No.

Q. Have they expressed an opinion?

A. No.

Q. Are you now free of any prejudice or bias of any kind or nature against these defendants?

A. Yes, sir.

Q. And at your hands they can now feel as though they can get a fair trial?

A. Yes, sir.

Q. Do you believe in every law that has been explained here to prospective jurors?

A. Yes, sir.

Q. And you will enforce them if the Court so charges?

A. Yes, sir.

Q. Is there anything I asked of these other gentlemen in the box that you would answer differently?

A. No, sir.

Q. I take it the rules with respect to accepting or rejecting an accomplice's testimony would be strictly applied by you?

A. Yes, sir.

Q. And if they have a motive, if they have denied it, you will consider that?

A. Yes, sir.

Q. In other words, you will ask the District Attorney to prove his case, as the law demands he shall, by competent and believable evidence, not by any kind of evidence, but prove it beyond a reasonable doubt?

A. Yes, sir.

Q. And it will be for you to believe or disbelieve any of [fol. 1543] the witnesses who say these things?

A. Yes, sir.

Q. Will you demand an explanation by any of the defendants of the charge against him if the Court tells you that the defendant need not prove or disprove any charge against him?

A. No.

Q. In other words, you will take this case, and if the People have failed to prove him guilty beyond a reasonable doubt, and the Court tells you you have no right to draw an unfavorable inference against him, you will not do so?

A. No, sir.

Q. The burden shall always be with the prosecution?

A. Yes, sir.

Q. If Mr. Buchalter should take the stand and, as you already know, testify that he is now incarcerated for a considerable number of years, I think forty or seventy, will you hold that against him in this case?

A. No, sir.

Q. No doubt about it?

A. No, sir.

Q. You will try here the case contained in the indictment?

A. Nothing else.

Q. Will you hold yourself strictly to that issue?

A. Yes, sir.

(A recess was taken until two o'clock p. m., and talesmen admonished as previously as to their demeanor. Defendants are remanded.)

[fol. 1544] AFTERNOON SESSION—TRIAL RESUMED

(All defendants represented by counsel.)

The Court: You may proceed.

(Interrogation of talesmen in the jury box continued.)

By Mr. Barshay:

Q. Just one question, Mr. Pinto. Did you read anything about this case other than the items you mentioned in the paper?

A. No.

Q. No place else did you hear about this case?

A. No, sir.

Q. Speeches or radio or something like that?

A. I happen to be working 4 to 12, so I am not at home to hear them.

By Mr. Talley:

Q. I understand that none of you gentlemen have served on a criminal jury before.

A. (By a Talesman): I have.

Q. Mr. Day, do you understand that an indictment is merely an accusation in writing?

A. I do.

Q. It carries no import of guilt of the defendants named therein?

A. I understand.

Q. And do you understand that the burden of proof of the facts of that indictment always rests on the People, who bring that indictment?

A. Burden of proof rests with the District Attorney.

Q. Do you understand that?

A. Yes.

Q. Do you understand that that burden never shifts at any part of the trial from the shoulders of The People [fol. 1545] onto the shoulders of the defendants?

A. I understand.

Q. If the Court should charge you that it is the right of a defendant either to take the stand or not take the stand as he sees fit, and if any of these defendants should not take the stand that you should not indulge in any presumption against them because of their failure so to do, if the Court charges you, will you give each of those defendants, if there are such, that presumption in their favor?

A. Yes, I will.

Q. And you understand that the law goes a step further and requires that before a jury can convict they must be satisfied beyond a reasonable doubt as to the guilt of that defendant before such conviction can be found properly and conscientiously? Is that your understanding?

A. That is my understanding, yes.

Q. And if you have, after hearing all the evidence and having weighed it and discussed it with your fellow jurors, if there is a reasonable doubt in your mind—and the Court will tell you what a reasonable doubt is—if there is a reasonable doubt in your mind will you resolve that doubt in favor of the defendants?

A. Yes, I will.

Q. You have no impression as to the guilt or innocence of these defendants from anything you have read or said or heard said?

A. No.

Q. Up to this moment; is that correct?

A. No, I have not.

Q. Mr. Pinto, do you understand our law about an indictment?

[fol 1546] A. Yes, sir.

Q. It is nothing more than a paper, which is an accusation?

A. Yes.

Q. And that it does not carry with it, because an indictment has been found, any presumption?

A. Yes.

Q. That the defendants named in that indictment are guilty of what the indictment sets forth and that that

indictment must be proven and proven by the People to your satisfaction beyond a reasonable doubt?

A. Yes, sir.

Q. If you have a reasonable doubt after hearing all the evidence, as to the guilt of any of these defendants, will you, without hesitation or fear, find a verdict in their favor?

A. I will.

Q. And on all these matters involving the rights of every defendant in our courts, to require the District Attorney to sustain the burden which he assumes when he brings a defendant into court charged with any crime, and if the Court charges you that that guilt must be established beyond a reasonable doubt in your mind, will you follow implicitly the instructions of the Court?

A. I will.

Q. And if a defendant does not take the stand, advised by counsel or otherwise not to do so, or there is no necessity for his doing so, and if the Court charges you that you are not to indulge in any presumption against him because of his failure to take the stand, will you follow that instruction of law?

A. I will.

Q. And you will not hold it against them?

A. No, sir.

Q. If they do not take the stand, realizing under the instructions of the Court that that is the right of every defendant in every criminal trial; is that correct?

A. Yes.

Q. Mr. Selig, does the same thing apply to you?

A. Yes.

Q. You realize the burden the District Attorney has of proving the guilt. It is not at any time under our law up to a defendant to prove his innocence. There is the distinction. The law gives, the District Attorney, as prosecutor, must prove their guilt. You understand a defendant can stand mute and remain silent, exercising the right which the law gives him, without a juror or jury assuming that he must be guilty because he has not taken the stand. You understand that? And if such a defendant does not take the stand you will not indulge in any presumption adverse

to him solely because of his failure to take the stand; is that correct?

A. That is right.

Q. You have no impression, have you?

A. None at all.

Q. About the guilt or innocence of these defendants in any respect?

A. None at all.

Q. Nothing you have read or heard has influenced you one way or the other with respect to the guilt or innocence of these defendants; is that correct?

A. That is right.

Mr. Talley: No further questions.

[fol. 1548] By Mr. Rosenthal:

Q. Do any one of you three gentlemen know anybody connected with the District Attorney's office?

A. No, sir.

Q. Or have you any relatives or close friends on the Police Force?

A. (By a Talesman): I have a brother-in-law.

Q. What is he, a policeman?

A. Policeman.

Q. Uniformed officer?

A. No, he is associated with traffic, an officer.

Q. Have you discussed police matters with him at any time?

A. No, sir.

Q. The fact that you have a brother-in-law on the Police Force would not affect your determination in this matter, would it?

A. No, sir.

Q. Addressing myself to you, Mr. Day, you realize that although these three men are being tried together and you are only going to hear the witnesses once, that in reality each lawyer representing a particular defendant has a separate and distinct task? You understand that?

A. Yes, I understand that.

Q. So that, whereas it may appear to you that certain questions are repeated by different lawyers and thereby prolong the trial, that, you understand that that is the duty of the particular lawyer, to ascertain on behalf of his

client what he considers is a favorable circumstance to his particular part of the case? Do you understand?

A. Yes.

[fol. 1549] Q. Appreciating that and knowing the hardship that it is for any man to serve on the jury and thereby take himself away from his business, you are not going to hold against any defendant the fact that lawyers in their zeal, advocating their particular cause, whether it be the District Attorney or defense counsel, have what might appear to your mind repeated the same thing twice?

A. No, that would not have any effect.

Q. No force and effect of me in asking you questions now, repeating something that Mr. Turkus or Judge Talley or Mr. Barshay, but you realize that I am doing that because my mind is operating in a particular way and theirs is operating, because—

A. I understand.

Q. You, I think, said that you have not read anything of any concern in the newspapers about this case. Am I correct in that assumption?

A. Just items describing what took place in the court since the trial started.

Q. And that has left no impression of any character on your mind which would be detrimental to The People or to the defendants; am I correct in that statement?

A. You are correct.

Q. It has been indicated in the questioning of jurors that in all probabilities in this case the prosecution will rely on what they call an accomplice. That has been gone over with you and with others, so that I think by now you are pretty familiar with what the term accomplice means. Am I right in that statement?

A. Yes.

[fol. 1550] Q. You understand that your duty is not to find out whether or not the accomplice is telling the truth about himself? In other words, if an accomplice got on the stand and says he admits killing Rosen, your job is not to find out whether he is telling the truth about what he did, your job is to find out whether he is telling the truth about what he said others did. That is the difference. Is that clear to you?

A. Yes, that is clear.

Q. In other words, it could be fairly possible, is that not so, that a man may go on the stand and admit that he

killed somebody and be telling the truth as to what he did but he might involve somebody else and be telling a lie as to that?

A. That is quite true.

Q. So that the job which you have and which you will direct yourself to is the job of ascertaining not only as to whether he is telling the truth concerning his participation in this particular crime, but as to whether he is telling the truth at all as to anything that he may say about others being involved; is that true?

A. That is true.

Q. I have asked other men, and I want your reaction to the question. The Court will charge you, of course, that no man can be convicted on the uncorroborated testimony of an accomplice, even though you might believe that accomplice. The law goes even that far as to say even if you believe a person who admittedly was an accomplice, that [fol. 1551] you still could not convict any man under our laws unless there were other evidence in the case satisfying you beyond a reasonable doubt and tending to connect the defendant accused with the crime itself. Is that clear to you?

A. That is very clear, yes.

Q. Do you understand by now that that evidence cannot be furnished by a number of accomplices; there must be others than accomplices to testify; is that clear?

A. That is clear.

Q. And do you further understand, sir, that although the law, the Judge may say to you as a matter of law where there is no dispute—So-and-so has taken the stand and I charge you as a matter of law he is an accomplice—that under those circumstances you must take that to be the fact and must, in determining in your jury room, say to yourself, "This man has been charged by the Judge as a matter of law to be an accomplice"; is that true?

A. That is clear.

Q. Now then, do you understand further that there may be a dispute as to the participation of certain witnesses called by the District Attorney in the crime? In other words, there may be evidence which leaves it open as to whether or not he actually is an accomplice or he is not an accomplice? Do I make myself clear?

A. It is up to me to decide.

[fol. 1552] Q. Then it is up to you. Even the Judge will say it is up to you, the jury, to decide from what you believe, from his actions, from his demeanor, from his motives, from his testimony, from his activities, his close proximity to the crime, and anything that might be said or done on the witness stand, whether you as a jurymen say as a question of fact that he is an accomplice; is that clear?

A. It is clear.

Q. Is it very clear to you, sir, that if you once determine in your jury room that a man is an accomplice, whether the Judge has told you as a matter of law he is an accomplice or whether you determined it as a question of fact, that the same principles of law surround him as surround the man who the Judge said was an accomplice as a matter of law; is that clear?

A. Yes, that is clear.

Q. I don't intend to repeat these questions if I can avoid it, and if there is anything in the mind of you, Mr. Pinto, or Mr. Selig, which would in any wise be different from what Mr. Day says, then if you will keep it in your mind I will direct my question that way, and in that way I can save time and avoid repetition of the same questions.

Now then, if you once determine that these people are accomplices, you understand that it is then your duty to ferret and sift through the evidence to ascertain whether [fol. 1553] there is other evidence satisfying you that the proof establishes facts tending to connect the particular defendant with the crime that you happen to be deliberating on at the time? That is clear?

A. That is clear.

Q. The Court will, of course, charge you that because a man, an accomplice, says, "I know that a defendant committed the crime and shot and killed him and left him on the roadway," that the proof that he was left on the roadway supplied by somebody and the proof that he was shot is not evidence which connects or tends to connect the defendant.

Mr. Turkus: I object to it.

Mr. Rosenthal: This is preamble to what I intend to find out, whether the jurymen will follow the Court's instruction on the law.

Mr. Turkus: I have an objection, your honor.

The Court: Finish the question.

Q. Let me withdraw it and put it this way: If the Court were to charge you that the mere fact that an accomplice, in telling you his story, says that the man was shot, and, of course, it is proved that he was shot and that he was left on a certain corner dead, and it is proved that he was dead and was on the corner, is not the evidence which is required, the independent evidence that is required to connect the particular defendants with the crime, would you follow that law?

[fol. 1554] Mr. Turkus: Objected to. This is a discourse on the law.

The Court: Overruled.

By the Court:

Q. The proof of the murder does not prove who did it. Do you understand that?

A. Yes, I understand.

Q. So corroboration of the fact that a man was murdered does not corroborate as to who did it?

A. That is right.

By Mr. Rosenthal:

Q. That is the point. Now then, in looking through the evidence to find independent evidence, you are going to find what believable independent evidence there is, if any, which tends to show that the defendant Capone, whom I represent, had something to do with the particular murder isn't that true, sir?

A. Yes, that is true.

Q. Now then, assuming that the District Attorney relies upon what is termed an admission, to supply this independent evidence, in other words, some men or man go on the stand and say that in a talk they had with the defendant Capone, he, Capone, said that he committed the crime, and the District Attorney then says to you that is the independent evidence, will you, if such happens to be the case, carefully scrutinize the source from which this alleged admission comes?

A. Yes.

Q. And determine whether the particular individual has [fol. 1555] committed a great many crimes of any and every degree, for which he has never been punished, and where and when he is supposed to have had this conversation, and when and where he is supposed to have divulged it, and whether he has ever been under oath before and whether he told the truth when he was under oath and whether he lied, and everything, including his actions, his demeanor on the stand, and everything which you see in this court-room in ascertaining in your own mind and according to your own conscience whether you believe that what he says is the truth or not? Would you do that?

A. Yes, I would.

Q. And that, I assume, the three of you would; is that true?

A. Yes.

Q. If you once were in doubt of the veracity of that particular individual or those individuals, and had a reasonable doubt as to the truth of his statement, and that was the evidence which The People relied upon, the independent evidence, and the Court were to charge you that if a reasonable doubt is created by anything, either the evidence itself or the lack of evidence, that you must resolve that doubt in favor of the defendant, would you hesitate to come in and resolve the doubt in his favor and acquit him?

Mr. Turkus: I object to extended discussion as to the possibilities of the proof.

The Court: Overruled as to this.

[fol. 1556] A. If that was the only evidence, I would not find the defendant guilty.

By the Court:

You cannot say how you would find the defendant. These questions are purely in the abstract. You cannot announce a decision before you try the case.

A. No.

Q. The question is whether you will fairly consider the evidence and use common sense in determining who tells the truth and what are the reasonable inferences you will accept as true.

By Mr. Rosenthal:

Q. The point is, in asking all these questions, and the reason for the repetition, you understand is to see whether or not, under the principle of law which we say the Judge is going to charge to you, that your reaction would be such that you would accede to those principles without any mental reservations or hesitation in the jury room.

A. I would have no—

Q. Whatever principle it may be. Some men disagree with the law as it is, and that disagreement is of a nature where they would be biased one way or the other in the jury room, and for that reason we ask you these different questions. I take it from your answer that such would not be the case with you.

A. I would abide—

Q. By the law as charged to you by the Court?

[fol. 1557] A. That is right.

Q. Subordinate any knowledge you might have to the law which the Court charges?

A. That I would try to do.

Q. You may have heard, while you were in the courtroom here, the question of alibi discussed. Were you present?

A. Yes, I heard that.

Q. Merely because a defendant were to take the stand, offer himself as a witness, that fact alone would not in your mind brand his testimony as untrue, would it?

A. No.

Q. The mere fact that he is a defendant. You, of course, will apply all the tests that apply to anybody else in determining for yourself whether he tells the truth; am I right in that?

A. Yes.

Q. And, having once found that he has told the truth, if you so find, the truth from him is just as valuable as from any other source, isn't that true?

A. Yes, if I believe what he said.

Q. Do you understand that the offer of an alibi does not in any wise shift the burden of proof over to the defendants' side of the case? Do you understand that?

A. I understand that, yes.

Q. Do you further understand—and whenever I make this statement it is always with the preamble that if the Court

instructs you in the manner in which I am asking the question, then you will follow it, otherwise you would disregard [fol. 1558] it—do you further understand that if a reasonable doubt is created in your mind as to the guilt of any defendant, brought about by testimony of an alibi, that you must resolve that doubt in his favor, the same as you would any other reasonable doubt, and acquit him? Do you understand that, sir?

A. Yes, I understand.

Q. Do you further understand and are you willing, in the event that you are charged in that manner, that if a doubt is created of a reasonable nature by reason of the testimony which is adduced on behalf of the defendant regarding his presence elsewhere, and his not being connected with the crime, and that that doubt, or that reasonable doubt, must be applied to the defendant the same as any other reasonable doubt in your mind? Would you follow such instruction?

A. Yes, if I had a reasonable doubt as to being where the crime was committed, I would.

Q. Resolve that doubt in favor of the defendant. I take it that—and I might ask this question of the three of you—do you happen to know Lieutenant Osnato?

A. No. No.

Q. Or Captain Bols?

A. No, sir.

Q. I take it none of you are going to actively engage in the political campaign which is now under way.

A. Except to vote.

Q. That is your duty. Probably if you had not voted, you would not be here today, because you would not be on the [fol. 1559] list. I mean other than to vote for whoever you choose to vote for, that you will not take any active participation?

A. No.

Q. The District Attorney stated about breaking a case from the inside. You understand, Mr. Day—and this applies to the three of you—that your job here is to ascertain whether any case is broken, inside or outside. You understand that? Is that clear to you?

A. Yes.

Q. The mere statement of a District Attorney or an Assistant to you that a case is solved—that is the word he used—have you any objection to a District Attorney solv-

ing a case by breaking it from the inside—you fully realize that it is your duty to say whether or not, as far as these defendants are concerned, it has been solved; isn't that true?

A. It is our job to decide whether they are guilty.

Q. Which means the solution as far as this defendant is concerned, isn't that true?

A. I suppose so.

Q. It may be true that he solved it as far as the particular individual who said that he participated in the crime. That is clear, isn't it?

A. Yes.

Q. But when it comes to the question of the testimony of that individual on the stand that he was aided or assisted by others, and names the others, you understand that it is your duty to ascertain whether or not he is telling the truth in respect to that and whether, with the other questions of law that I have already stated to you, it has been established beyond a reasonable doubt before you can find any defendant guilty—you understand that?

A. Yes.

Q. You are not impressed, are you, sir, by the fact that the District Attorney has told you or has intimated that this case has been solved from the inside?

Mr. Turkus: I object to it. The juror has already been asked that.

The Court: Sustained.

Mr. Rosenthal: I have not asked that question at all of this juror, whether he is impressed by that statement.

The Court: I don't think it is competent anyway. Sustained.

Mr. Rosenthal: Exception.

Q. Is there any impression in your mind existing at the present time which would in any wise require evidence on anybody's part to remove by reason of the statement made by the District Attorney in respect to solving a case from the inside?

Mr. Turkus: Objected to. It has already been answered.

Mr. Rosenthal: I have not asked the question.

The Court: I sustained the previous objection because I cannot conceive of any juror accepting a preliminary question by counsel for either side as proof in the case.

Mr. Rosenthal: I am not asking about proof. I told him it is not proof—

By the Court:

[fol. 1561] Q. You realize when Mr. Turkus asked you that question that it is not proof that the case was broken from the inside?

A. Yes.

Q. You all realize that?

A. Yes.

By Mr. Rosenthal:

Q. Let me just ask you this other question: The mere fact that a defendant were to know some of the prosecution witnesses or the mere fact that they may have been in there together at some time or other, that fact standing alone, would that prejudice you against the defendant if you were not satisfied that the defendant participated in the particular crime? Is that question clear to you, Mr. Day?

A. It would have no bearing on my decision of guilt or innocence.

Q. How about you?

A. The same way.

Q. And how about you?

A. Same.

Q. Is there any reason why any one of you three gentlemen know, is there any reason that you know of, that has not been reached by questioning by any of the counsel that you feel would in any wise incapacitate you from acting as fair and impartial jurors?

A. No.

Mr. Talley: All three jurors are satisfactory to the defendant and all defendants.

Mr. Turkus: Mr. Day is satisfactory to The People of the State. Peremptory on the other two.

(David M. Day takes Seat No. 4 in the jury box.)

The Court: Fill the box.

(The following talesmen took their seats in the jury box: Iver Bae, of 920 Fifty-second Street; Walter C. Petterson, [fol. 1562] of 480 East 21st Street; Herbert A. Horland, of 4727 Bedford Avenue; Sam Silfen, of 495 Schenectady

Avenue; Clinton T. Eckstein, of 136 Herkimer Street; Theodore A. Bartholomew, of 1550 East 17th Street; John E. Fuller, of 850 East 31st Street; Henry T. Gill, of 818 Fifty-seventh Street, Brooklyn.)

The Court: The other members may return at seven o'clock.

Mr. Climenko: If your Honor pleases, may I ask what time your Honor intends to recess?

The Court: Well, my present intention is that the seven o'clock jurors would come in after supper time.

Mr. Climenko: I am trying to ascertain, your Honor, at what time I should be able to have my own dinner and communicate with my office.

The Court: I intended to have the supper recess at six.

Mr. Climenko: Thank you, sir.

The Court: That breaks up the day nicely. It means three hours' work in the morning; it means four hours in the afternoon. That is rather tiresome, but after an hour's recess everybody will feel better.

Mr. Climenko: If I may say so, your Honor, it constitutes something of a hardship to those who must look to their offices.

[fol. 1563] The Court: I have had worse hardships than that.

Mr. Climenko: Of course, this one I feel more keenly. Of course your Honor does not.

The Court: Just take it on the chin. Proceed.

(The eight talesmen who took their seats in the jury box were then examined as to their qualifications.)

By Mr. Turkus:

Q. Mr. Bae, there are certain questions which I will ask through you which apply to the other members of the jury and there are others that apply just to you. I will try to get through with those which apply specifically to each juror, and then I will go into those that apply—

You are listed as living at 920 Fifty-second Street; is that right?

A. Right.

Q. Is that the Bay Ridge section of Brooklyn?

A. That is right.

Q. And you are listed as a draftsman?

A. That is right.

Q. By whom are you employed?

A. Consolidated Edison.

Q. And how long have you worked for the Edison?

A. Twelve years.

Q. Prior to working for the Edison what kind of work did you do?

A. Same thing.

Q. Was that for some other utility?

A. Well, branch of it.

Q. A branch of the Edison Company?

A. That is right, or it was not exactly a branch, but it is considered as a branch.

[fol. 1564] Q. Subsidiary of some sort?

A. Yes.

Q. Do you understand the nature of the charge since you have been coming into court as a juror, that the defendants at the bar here are charged with the crime of murder in the first degree?

A. I understand that, yes.

Q. Is there anything about the nature of the charge which would prevent you from being a fair and just juror?

A. No.

Q. Have you any scruple, conscientious or otherwise, against capital punishment?

A. No, not exactly scruples, no.

Q. Is there something in your mind about that?

A. If it should come as a rule. As it is the law, I would stick up for it.

Q. You mean you are not in favor of capital punishment?

A. Not in general, no.

Q. Would that attitude of yours have some bearing on your deliberations in the case?

A. No.

Q. Would you consider the question of punishment in deliberating in your own mind about the guilt or innocence of the defendants?

A. Certainly.

By the Court:

Q. That is a question of law. The law is that you shall not. Will you follow that instruction?

A. (No answer.)

Q. The law is that you shall not consider the question of punishment. Will you follow that instruction?

A. Yes, sure.

By Mr. Turkus:

[fol. 1565] Q. Even if the Judge tells you that you should not consider the question of punishment, would the state of mind which you have, which is contrary to capital punishment, still enter into your deliberations?

Mr. Rosenthal: I object to the form of the question.

A. No.

The Court: He says no.

Mr. Rosenthal: I withdraw it.

Q. One of the defendants' lawyers has pointed out that he has been heretofore convicted of past crimes and sentenced to a long jail term. Would you be inclined to relax your duty as a juror because of that fact?

A. I don't believe I quite get that.

Q. One of the lawyers has pointed out that his client has been convicted——

A. Yes.

Q. —of crimes that he committed, other crimes, and sentenced to jail for that. Do you understand that part of it?

A. Yes.

Q. Would you permit the fact that that man is in jail to cause you to relax your duty as a juror in this murder charge?

A. No.

Q. Would you permit that fact to cause you to render any other but a proper verdict in the case?

Mr. Climenko: I object to the form of the question.

The Court: Overruled.

[fol. 1566] Mr. Climenko: Exception.

Q. Do you understand that?

A. Will you repeat that last part?

By the Court:

Q. Would you permit that to affect your verdict?

A. No.

By Mr. Turkus:

Q. What kind of work is it that you do for the Edison, Mr. Bae?

A. Power station.

Q. Is it a foreman's job or workman's job?

A. No, it will be workman's job. Have a foreman, one who is in charge of it.

Q. Is it the type of work that you require some particular skill and prior schooling?

A. Yes, sure. Have to go to school and get a lot of experience.

Q. And was that some college or vocational school?

A. Well, it is college, partly college anyway. It is called an engineering college. Pratt Institute I have been going to.

Q. Since you received your notice did anybody speak to you about this case?

A. Well, it has been mentioned. At work, of course, it has been mentioned. Nobody spoke to me specifically about it. I would not say that, no.

Mr. Talley: Mr. Bae, keep your voice up so that we can hear you.

Q. Did anybody express an opinion about the case?

A. Not on this particular charge, no.

Q. Was any opinion expressed in regard to any defendants?

[fol. 1567] A. On previous charges, yes.

Q. Did you take part in the talks?

A. No.

Q. Did you express any opinion?

A. No.

Q. Of previous cases?

A. No.

Q. Other than that, nobody has spoken to you about the case?

A. No.

Q. Are you in sympathy with the enforcement of the penal law of the State?

A. Yes.

Q. There are certain industries that I want to make mention about. Do you have or have you had any contacts

with anyone in the garment industry or the clothing industry?

A. No.

Q. Or with respect to anyone in the clothing trucking industry?

A. No.

Q. Did you have or have you now any contacts in the Brownsville-East New York section of Brooklyn?

A. No.

Q. Or on the Brooklyn waterfront?

A. No.

Q. Have you served as a juror before?

A. No.

Q. Is this the first time you have been in the jury box as a prospective juror?

A. That is right.

Q. Have you heard discussed the question of accomplice testimony?

A. No.

Q. Mr. Bae, do you speak some foreign language?

A. Yes, sir.

Q. Is it a language that you speak in your every-day walks of life?

A. Partially, at home.

Q. Do you feel—and I do not want to be offensive or in [fol. 1568] any wise embarrassing to you at all—do you feel you may have some difficulty in following testimony?

Mr. Climenko: I object to the question on the ground it is obviously improper.

The Court: He can say whether he has any language difficulty which would make it difficult for him to understand witnesses and counsel.

A. With regard to legal phrases and so forth, yes. I have never been in the court-room before, and what is going on has been strange to me so far. It is really hard to understand part of it. That is a fact.

Q. And because of that language difficulty do you feel you may have difficulty in following the objections of law?

Mr. Cuff: I object. He does not say he has any language difficulty. He specifically referred to legal phrases, and I think the man is intelligent.

The Court: Sustained.

By the Court:

Q. You are a Scandinavian?

A. That is right.

Q. A Norwegian?

A. That is right.

Q. Been in this country how long?

A. Twenty-seven years.

By Mr. Turkus:

Q. Do you feel that because of language you may have difficulty in following the testimony of witnesses?

A. No.

Q. Do you feel you may have some difficulty in following [fol. 1569] counsel?

A. Yes.

Mr. Turkus: I am going to press a challenge for cause.

The Court: He explained that is just technical words. The only difficulty he has, he carries his own dialect, but that does not mean he does not understand.

Mr. Turkus: There are people who do find difficulty in following a court-room proceeding, and it is important to The People of the State of New York and the defendants.

The Court: Of course, I must try the challenge. Try it.

IVER BAE, of 920 Fifty-second Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Turkus:

Q. Mr. Bae, did I understand you correctly to say that you are familiar with a foreign language?

A. Yes, sir.

Q. And that language you speak every day at your home?

A. Partially, yes.

Q. And is that the foreign language that you have been talking ever since you came to this country?

A. Yes, sir.

Q. Did you say to me that you had some difficulty in understanding the proceedings here while you were seated here?

A. Yes, phrases the lawyers are giving are pretty hard to understand, some of them, I know that.

Mr. Talley: Hard for the lawyers to understand them.

Mr. Cuff: They do not, as a matter of fact.

Mr. Turkus: This is no time for jesting. I object to the [fol. 1570] remarks. This is a serious inquiry.

Mr. Talley: You bet it is.

By the Court:

Q. You are how old, Mr. Bea?

A. Forty-nine.

Q. Then you were twenty-two years old when you came to this country?

A. Yes, practically.

Q. What part of Norway did you come from?

A. Western part.

Q. What particular place?

A. The nearest city would be Christiansen.

Q. How far from Christiansen?

A. Four or five miles.

Q. You lived in a fishing settlement?

A. No, industrial settlement.

Q. And what was the industry?

A. Manufacturing wooden ware.

Q. And I take it the school system there was pretty well organized?

A. Yes, the elementary school, yes.

Q. Did you have an elementary school education?

A. Yes.

Q. Did you complete it?

A. Yes.

Q. And we concede that the Norwegian elementary school system is good. Did you carry that through to high school?

A. No.

Q. I take it that you have read. Do you read books?

A. Oh, yes.

By Mr. Turkus:

Q. The books that you read, are they any technical books?

[fol. 1571] A. No, any kind of books.

By the Court:

Q. And now that you are in this country you have your neighborhood and your church affiliations?

A. Yes.

Q. And you meet a nice class of people?

A. Yes.

Q. And you talk this language simply because they are fellow Norwegians?

A. That is right.

Q. And are you able to understand English as it is spoken by those who do not speak the Norwegian dialect?

A. Yes, sir.

Q. You have no difficulty whatever?

A. No.

Q. When you said that you had difficulty, did you refer to legal terminology?

A. Yes, the way it is spoken here in the court-room. I have never been in a court-room before.

Q. There have been some technical terms used that are new to you?

A. That is right.

By Mr. Turkus:

Q. Is this your first experience in a court-room?

A. That is right.

Q. You have never been in a court-room in a civil case either as a witness or a spectator?

A. No, sir.

Q. Or a participant? And you have never been in a criminal court-room as a juror, as a witness, nor as a spectator?

A. No, sir.

Q. If the Court were to instruct you that an accomplice is one who is a co-participant in a crime, could you follow [fol. 1572] that instruction of law?

A. Yes.

Q. Do you understand what it means?

Mr. Cuff: I object to that. It has nothing to do with the challenge.

Mr. Rosenthal: I object to the question. We are trying out, as I understand it, a challenge as to his ability to comprehend the English language.

By the Court:

Q. Do you know the meaning of a co-participant?

A. Yes, partner.

Mr. Rosenthal: That is pretty good.

Mr. Turkus: That is very good.

Q. You went to Pratt Institute how long?

A. Evening school only for six years.

Q. That was all an English course of instruction?

A. No, it was technical instruction.

Q. But in English?

A. In English.

Q. You understood the instruction?

A. Oh, yes.

Q. All English textbooks?

A. Yes, sir.

Q. And I take it now as a draftsman that you draw the plans for conduit routes and switchboard routes and so on?

A. Yes, sir.

Q. Anything technical, where work has to be done by the Edison Company?

A. That is right.

Q. First a plan has to be drawn, and it is your job to [fol. 1573] draw it?

A. Yes.

Q. Are the notations on those plans in English?

A. Certainly.

Mr. Turkus: I am going to withdraw my challenge, your Honor.

The Court: You may step back there.

(Mr. Bae resumes his seat in the jury box.)

By Mr. Turkus:

Q. Mr. Bea, would you have any prejudice against a prosecutor or against a prosecution because a challenge had been applied?

A. No.

Q. I mean, you sit there now without any resentment either to The People or to The People's case; is that correct?

A. Yes.

Q. There are nine lawyers here representing these three men at the bar of justice, former Assistant District Attorney Barshay, former Assistant United States Attorney Wegman, and Jesse Climenko. They are three lawyers who

represent the defendant Buchalter. Do you know any of those three lawyers?

A. No, sir.

Q. Do you know anybody in their law offices or associated with them?

A. No.

Q. With respect to the defendant Weiss, who is seated over there, he is represented by a former Judge of the Court of General Sessions in Manhattan, Judge Talley. Do you know him?

A. No, sir.

Q. He is assisted by Assistant District Attorney—former [fol. 1574] Assistant District Attorney James L. Cuff and former Assistant United States Attorney Murray Kriendler. Do you know any of those gentlemen representing the defendant Weiss?

A. No, sir.

Q. Or anybody connected with their law offices?

A. No, sir.

Q. The defendant Capone, he is the one seated in the back, he is represented by Mr. Sidney Rosenthal, Mr. Leon Fischbein, and Mr. Rosenberg. Do you know any of those three lawyers?

A. No, sir.

Q. Or anybody connected with their law offices?

A. No.

Q. Do you know any member of the bar intimately who specializes in the defense of criminal cases?

A. No.

Q. The District Attorney of the county is Judge O'Dwyer. Do you know him personally?

A. No, sir.

Q. Or do you know any Assistant District Attorney on his staff?

A. No, sir.

Q. Have you in any wise secured the acquaintance of any union official of the Amalgamated Clothing Workers of America?

A. No, sir.

Q. And when I ask these questions and names I will, with respect to the admonition given by the Court, ask the other members of the jury to listen to the names to see if they have any familiarity as we go down the line. Does the name

of Murray Weinstein, manager of Cutters Local No. 4, affiliated with the Amalgamated, have any significance to you?

A. No.

[fol. 1575] Q. Or the name of Samuel Katz?

A. No.

Q. Is there any significance in your mind to the name of Bruno Belia, an organizer of the Amalgamated Clothing Workers of America?

A. No.

Q. In any wise do you know any official who is connected with Local 240 of the Clothing Drivers & Helpers Union?

A. No.

Q. Is the name of Max Silverman or Wolfie Goldis familiar in any way at all?

A. No.

Q. Or the name of Salvatore Marazzano?

A. No.

Q. William or Willie Alberts, a one-time bondsman?

A. No.

Q. Is there any familiarity to the name of Emanuel Buchalter?

A. No.

Q. Or that of Philip Kowas?

A. No.

Q. Or the names of Bellanca and Tosca?

A. No.

Q. Hyman (Curley) Holtz?

A. No.

Q. Or Terry Burns, Abie Slabo—any of those names at all familiar?

A. No.

Q. What newspapers do you customarily read, Mr. Bea?

A. *Tribune* and *Journal*.

Q. Is there anything that you have read in the *Journal* regarding this case, or in the *Tribune*?

A. Well, ordinary news about the case, yes, the case called and case adjourned, something like that.

Q. Did you read any of the facts of the homicide or the murder?

A. No.

[fol. 1576] Q. In the articles?

A. No.

Q. Is there any newspaper reading that you did in which the name or names of defendants were mentioned?

A. Newspaper reading.

Q. Yes, did you read it?

A. In the news that I read, yes, the names are mentioned, sure.

Q. How recent was that?

A. About a week ago.

Q. Before that had you read any of the names of any defendants?

A. Yes. In the news items about the trial.

Q. Did any of the readings that you had leave any impression with you as to the guilt or innocence of the defendants?

A. No.

Q. Is there anything which came to you from an outside source, whether it be by reading or hearing, that gave you an impression as to guilt or innocence of the defendants?

A. No.

Q. If the Judge should charge you in words or substance that an accomplice is a co-participant in the commission of the crime, will you accept that instruction of law?

A. Yes.

Q. Do you find any fault with the District Attorney of the county, Judge O'Dwyer, in taking the testimony of one of the perpetrators of a crime and using it against the others?

A. I have no opinion about that.

Q. I mean by that, do you find any fault with the prosecutor for using the testimony of one of the perpetrators against the others?

A. No.

[fol. 1577] Q. Would you have any fault or any prejudice against a prosecution which would employ the use of the testimony of one of the perpetrators against the others who were in the group?

A. No.

Q. Do you understand me as I go along?

A. Yes, I understand.

Q. If selected as a juror in the case, will you listen to fair argument by the other jurors?

A. Yes.

Q. Will you endeavor, with common sense and understanding, to apply the principles of law that the Judge gives you to the facts in this case?

A. Yes.

Q. Will you by your verdict endeavor to do justice in the case?

A. Yes.

Q. Is there anything that I have not asked you that would go to your ability to be a fair and impartial juror?

A. No.

Q. Do you feel as you sit here now that you can pass judgment on this case and do justice to the People of the State of New York and the defendants at the bar?

A. I think so, yes.

Q. Have you any doubt about it?

A. No.

Q. Mr. Petterson, do you live at 480 East 21st Street?

A. That is right.

Q. Is that the Flatbush section of Brooklyn?

A. That is right.

Q. Is that in the close vicinity of Church Avenue or Albemarle Road?

A. It is about four blocks away.

[fol. 1578] Q. How long have you lived in Flatbush?

A. About fourteen or fifteen years.

Q. You are listed here on the trestle board as a repair man. By whom are you employed?

A. New York Telephone Company.

Q. How long have you been engaged in that vocation?

A. In that particular vocation about five years. I work for the Telephone Company sixteen.

Q. I take it, then, that your type of work requires some specialized knowledge of mechanics?

A. Yes.

Q. And that you have had some vocational course either by the Telephone Company or some outside school?

A. Five years.

Q. You heard, I believe, the questions that I addressed to Mr. Bae about any knowledge of any person or firm in the industries that I mentioned, the garment, the clothing, and the clothing truckers. Have you any connection there?

A. No.

Q. Have you had any in the past?

A. No.

Q. With respect to Brownsville-East New York, is that true too, that you have no connections there at all?

A. That is right.

Q. With respect to the nine lawyers in the case, do you know any of the nine?

A. I do not.

Q. Anybody connected with their law offices?

A. No.

Q. Or any member of the bar who specializes in the trial of criminal cases?

A. I do not.

Q. I believe you have been here sufficiently long to understand [fol. 1579] stand that the three defendants at the bar, Buchalter, Weiss, and Capone, are charged with murder in the first degree. Do you understand that?

A. Yes.

Q. Is there anything about the nature of the charge which would prevent you from acting fairly as a juror in a criminal case?

A. No.

Q. Have you any scruple, conscientious or otherwise, against capital punishment?

A. I have not.

Q. Since you received your jury notice, did anybody speak to you about the case?

A. Yes, my fellow employees.

Q. Was that on the question of possible length of service on the jury?

A. That is right.

Q. Are you in sympathy with the enforcement of the penal law?

A. I am.

Q. Do you know the District Attorney, Judge O'Dwyer, or any assistant on his staff?

A. I do not.

Q. Sir, have you any fault to find or any bias or prejudice against the prosecution for taking one of the perpetrators of the crime and using him as a witness against the others?

A. I have nothing against the prosecution but it would be hard for me to believe the testimony of a confessed accomplice.

Q. I want to go into that and see just what your statement is. Is your state of mind such that no matter what the circumstances were you would not believe an accomplice?

[fol. 1580] Mr. Rosenthal: I object to the question, if the Court please, one of law, and the talesman has not been apprised of what the law is on the subject.

Mr. Turkus: Will you read back the question that the juror answered and then this question, so the Court may have it before it?

Mr. Rosenthal: The Court was here. I do not understand that the Court needed it.

By the Court:

Q. Have you a prejudice against the testimony of an accomplice so strong that you would rule it out even though it is corroborated?

A. Yes, sir, it would be hard for me to believe that sort of testimony.

Mr. Turkus: Challenge.

Q. You mean in any case where there is an accomplice, you would not believe the accomplice?

A. It would be in my mind that he is getting some gain from that.

Q. That is in everybody's mind. The question is whether you would treat his testimony sensibly and try to decide whether it is true or not or whether you would decide even before hearing him that he cannot tell the truth because he is an accomplice.

A. It is my opinion it would be hard for me to believe that testimony.

Mr. Turkus: Challenge for cause.

The Court: Try the challenge.

[fol. 1581] WALTER CHARLES PETTERSEN, residing at 480 East 21st Street, Brooklyn, New York, being duly sworn, testified as follows:

By the Court:

Q. Near Cortelyou Road?

A. Dorchester Road. Between Dorchester and Cortelyou.

Q. What line of work are you in?

A. Repairman.

Q. What line of work?

A. New York Telephone Company, repairing telephones.

By Mr. Turkus:

Q. Mr. Pettersen—am I correct in the pronunciation of your name?

A. That is right.

Q. You made no application for any excuse, did you?

A. I did not.

Q. The questions that were put to you by the Court and the District Attorney and to which you made response, were they truthful answers?

A. They were.

Q. And do they honestly represent your state of mind, sir?

A. They do.

Q. If the questions were repeated, would you make the same answers?

A. I would.

Q. And would the answers be truthful?

A. They would.

Mr. Turkus: Press the challenge.

By Mr. Rosenthal:

Q. Mr. Petterson, do you know anything about the law in [fol. 1582] respect to accomplices? Do you know anything at all about the law, the law of our State?

A. I do not know much about any law.

Q. Have you ever served on a jury before?

A. I have.

Q. In criminal cases?

A. Yes, I have.

Q. Then you have had the benefit of having the Judge instruct you as to the law of that particular case?

A. I have.

Q. And when the Judge instructed you, you followed the Judge's instructions, didn't you?

A. I served on one criminal case. It never came to a conclusion.

Q. Did you serve on any civil case?

A. I have.

Q. You got the benefit of the Judge's charge in the civil case?

A. I did.

Q. And you followed that charge of the law, irrespective of what your opinion was, didn't you?

A. To the best of my ability, yes.

Q. If the Court were to charge you that as respect to any accomplice it is the duty of a jurymen to always view with suspicion, care, and caution the testimony of an accomplice, you would have no difficulty in doing so in your present frame of mind, would you, of being suspicious, careful and cautious? Is that true?

A. That is right.

Q. And if the Court were to charge you, and you would follow that charge of the Court, wouldn't you, sir, to the best of your ability?

A. I would.

[fol. 1583] Q. Then if the Court were to tell you that you could not convict any man on the uncorroborated testimony of an accomplice, you would have no difficulty following that either, would you; that is, if his testimony was not corroborated, it would be your duty to acquit a defendant; you would have no trouble in doing that, would you?

A. No, I would not.

Q. And in the event that the Judge were to charge you that before you can convict any man, not only these defendants, but any man, that there must be other evidence in a case besides the testimony of accomplices, which would tend to connect the defendants with the crime, you would have no difficulty in following that, would you, under the instruction of the Court?

A. I don't think so, no.

Q. You would follow what the Judge would tell you is the law in respect to accomplices and what is necessary before you can convict on accomplice testimony before you decided on your conscience what your verdict should be; wouldn't you do that, sir?

A. I would try, yes.

Q. Well, to the best of your ability you would follow out the instructions of the Court on what the law is in respect to accomplices and the necessity of their testimony being corroborated?

A. That is right.

Vr. Rosenthal: That is all.

The Court: Anybody else?

Defense Counsel: No questions.

[fol. 1584] By Mr. Turkus:

Q. Mr. Pettersen, if after these questions have been asked by Mr. Rosenthal, if Judge Taylor and I were to repeat to you the questions we put at the outset, would you still make the same answers?

Mr. Rosenthal: I object to the question.

The Court: He has already answered that.

By the Court:

Q. You were born in Brooklyn?

A. Yes, sir.

Q. What part of Brooklyn?

A. It is in the downtown section. What street it is I don't remember. It is one of the old streets down there.

Q. Your folks born in Brooklyn?

A. My mother was. My father was born in Norway.

Q. I ask you because there used to be, under the old law of Brooklyn, there used to be a Justice of the Peace named Pettersen.

Mr. Climenko: I object to your Honor's question on the ground it is immaterial to the challenge.

The Court: Don't be stupid. Sit down.

Mr. Climenko: Exception to your Honor's remarks.

The Court: Sit down. Just fussy.

A. No relation of mine.

Q. That is the reason I asked you. It was not to be inquisitive. The question the Court has to decide is this: [fol. 1585] whether or not the prejudice that you have stated is such that you would not give the prosecution a fair, intelligent attitude as to whether or not an accomplice is telling the truth.

A. It is in my mind.

Q. Speak out loudly so counsel can hear you.

A. It is in my mind. It would be hard for me to believe that type of testimony.

The Court: Sustained.

Defense Counsel: Respectfully except.

By Mr. Turkus:

Q. Mr. Horland, do you live at 4727 Bedford Avenue? Have we met before? You look familiar to me.

A. I went to Boys High School.

Q. I went to Manual Training. 4727 Bedford Avenue is in what district?

A. Sheepshead Bay section.

Q. Have you lived there for a number of years?

A. One year.

Q. Where did you live before that?

A. Eastern Parkway and Utica.

Q. Is that near the Famous Restaurant and Dubrow's Restaurant?

A. Yes, sir.

Q. Have you patronized those restaurants?

A. Yes, sir.

Q. How far is that from the Brownsville-East New York section of Brooklyn?

A. Five minutes.

Q. You are listed here as a merchant. What type of merchandise do you sell?

[fol. 1586] A. I buy new and used musical instruments.

Q. And where do you maintain your place of business?

A. 110 Park Row, New York City.

By the Court:

Q. That is near William Simpson's old place?

A. That is correct.

By Mr. Turkus:

Q. Are you in business for yourself?

A. Yes.

Q. Did you ever live in the Brownsville-East New York section of Brooklyn?

A. Yes, sir.

Q. How many years?

A. Ten years.

Q. Are the names of Harry (Happy) Maione familiar to you?

A. From newspapers.

Q. Is there any familiarity to the name of Harry (Pittsburgh Phil) Strauss?

A. I have read of him.

Q. Martin (Bugsy) Goldstein?

A. Yes, sir.

Q. Abie Reles?

A. Yes, sir.

Q. Vito Guarino?

A. That I don't remember.

Q. Did you ever partake in any discussions with people you know in the Brownsville-East New York area on the O'Dwyer investigation?

A. I sell the I. W. O. and the I. O. G. W. O. They have organizations of musical companies, and we sell them their instruments, to these unionists on part payments, and I see these people all the time.

Q. You are referring now to the union in connection with [fol. 1587] ladies' garments?

A. And the Independent Workers Order.

Q. Have you talked about the Dewey investigation or the O'Dwyer investigation?

A. To some of the customers that come into the store.

Q. Did you, because of your business contacts with those specific people, follow the Dewey investigation with any interest?

A. Well, as a citizen, just to read the papers.

Q. Did you follow Judge O'Dwyer's investigation with any degree of interest?

A. Yes, sir.

Q. What newspapers do you read?

A. *Tribune*, *P. M.*, and the *Telegram*.

Q. *P. M.* and the *Telegram* and the *Tribune*. Are you related to Commissioner Herland?

A. No, my name is spelled Horland.

Q. From the conversations that you have had with people and from the things you have read, have you formed any opinion?

A. Formed a definite conclusion, yes, sir.

Q. Does that conclusion go to the guilt or innocence of these defendants?

A. To the guilt.

Q. You should have said yes or no. I have no recourse but to challenge.

The Court: Try the challenge.

HERBERT A. HORLAND, residing at 4727 Bedford Avenue, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Turkus:

[fol. 1588] Q. Mr. Horland, before you were brought into your present chair and sworn, you made response to questions that I put to you. Were those responses true?

A. Yes, sir.

Q. And do they truly reflect your state of mind?

A. Yes, sir.

Q. If I were to ask you the same questions, would you make the same responses?

A. Yes, sir.

Q. And were the sources of your information, the items that you mentioned to me in response to the questions, which has caused you to form an opinion, without stating what it is now?

A. That is correct.

By Mr. Barshay:

Q. You applied for an excuse when you were first called?

A. I did.

Q. Because of your business reasons, isn't that so?

A. That is correct, sir.

The Court: Any further questions?

Mr. Rosenthal: No questions on behalf of Capone.

Mr. Talley: No questions.

The Court: Sustained.

By Mr. Turkus:

Q. Mr. Silfen; is that correct?

A. That is correct.

Q. You are listed as living at 495 Schnecktady Avenue; is that right?

A. That is correct.

Q. Is that the Brownsville section of Brooklyn?

A. It is very close to it. It is what they call East Flatbush.

[fol. 1589] Q. Have you lived in that neighborhood for a number of years?

A. About twelve years.

Q. How many blocks away would you say that neighborhood is from the Brownsville-East New York section?

A. Oh, I would say about three-quarters of a mile.

Q. Prior to living at 495 Schneectady Avenue, were you a resident of Brooklyn?

A. Yes.

Q. What section did you live in?

A. Six years prior to that I lived over in Flatbush. Prior to that I lived in East New York.

Q. You are listed on the trestle board as a department manager by vocation. Is that a correct listing?

A. That is correct.

Q. And by whom are you employed?

A. The United Cigar and Whelan Drug Stores.

Q. Have you been with them a number of years?

A. Twenty-six years.

Q. Do I understand your position correctly as that of the manager of a store?

A. Department manager.

Q. I am sorry, I guess you hold a job that I don't understand. Does that mean you are the head of some departments, supervising the stores?

A. Well, it is display and window-trimming department, which works for the stores.

Q. In other words, your activities bring you, by way of business, to stores in various sections of the county?

[fol. 1590] A. Occasionally. Mostly inside, preparing.

Q. Do you have men under your jurisdiction?

A. Yes, sir.

Q. Are there stores in the garment and clothing districts which you have visited in recent years?

A. Yes.

Q. And stores in the Brownsville-East New York area which you visited in recent years?

A. Well, there is a store at St. Johns and Utica. I do not think that is considered Brownsville.

Q. I do not think so.

A. It is right on the borderline.

Q. Did you hear the questions that I put to Mr. Bae and through him to all the other jurors about any association or connection with anybody in that garment district or clothing district?

A. Yes.

Q. Have you any such connections of any kind, nature or description?

A. None at all.

Q. Do You know people in the Brownsville-East New York area of Brooklyn?

A. Just some old friends that I have not seen in years. I formerly lived there.

Q. Was there any familiarity to any of the names of union officials or others that I read, mentioned?

A. Not union officials, but you mentioned the name of Buchalter.

Q. Yes.

A. That is a dentist. I do not know him personally, but my mother-in-law has used him as a dentist, whether that would apply here.

Q. Do you know whether or not he has visited at the home [fol. 1591] of your mother-in-law?

A. Never.

Q. Has their connection been solely that of dentist and patient?

A. That is all.

Q. What papers do you customarily read, Mr. Silfen?

A. The *Times*, *World-Telegram*, and *News*.

Q. Have you read of Judge O'Dwyer's investigations?

A. Yes, occasionally, not thoroughly.

Q. Did you read of any persons mentioned in connection with the East New York and Brownsville sections of Brooklyn?

A. Just some of those names you mentioned before.

Q. Did you read of Harry (Pittsburgh Phil) Strauss, for example, and Martin (Bugey) Goldstein?

A. Yes.

Q. Harry (Happy) Maione?

A. Yes.

Q. Frank (The Dasher) Abbandando?

A. That one is not so familiar.

Q. Vito Cuarino?

A. No.

Q. Albert Anastasio?

A. No.

Q. Did you ever, from any of the contacts that you may have had, hear their names mentioned in any discussions?

A. No.

Q. Since you received your jury notice, did anybody speak to you about the case?

A. Nothing of interest; just the usual.

Q. When you say "usual," do you mean you might be stuck for jury service?

A. That is it.

Q. Is there anything that you have read in the press or anything that you have heard while you have been in that [fol. 1592] East New York area, that leaves an impression with you as you are seated in the box now?

A. There is a slight impression, slight impression.

Q. Is that an impression that goes to guilt or innocence?

Mr. Fischbein: May we have that answered just yes or no?

The Talesman: Yes.

Q. And is that an impression that goes to guilt or innocence in this case?

A. Yes.

The Court: He says yes.

Q. Is it that kind of an impression that would require evidence on the part of a defendant to remove?

A. Not necessarily on the part of the defendant.

Q. A defendant?

A. No.

Q. All defendants

A. All the defendants.

Mr. Turkus: I am required to challenge.

The Court: Try the challenge.

Sam Silfen, residing at 495 Schnectady Avenue, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Turkus:

Q. Mr. Silfen, while you occupied chair No. 8, I asked you certain questions. Do you recall that?

A. Yes.

Q. And in response to my questions you made answers?

A. Yes, sir.

Q. Did those answers truthfully reflect your state of mind?

A. Yes, sir.

[fol. 1593] Q. If I were now to ask the same questions, now that you are under oath, would you make the same answers?

A. Yes, sir.

Q. And would they be truthful?

A. Yes, sir.

By Mr. Barshay:

Q. Mr. Silfen, have you ever had an instruction with respect to law?

A. No.

Q. While you were waiting to be called did you hear the Court speak of presumption of innocence, or the lawyers?

A. Yes, sir.

Q. Did you hear that every person who sits in the jury box must accept the law from his Honor?

A. Yes.

Q. Do you agree with that?

A. Yes.

Q. You told Mr. Turkus that you believe in the enforcement of the penal law.

A. That is right.

Q. You meant that?

A. Yes, sir.

Q. The enforcement of the penal law also implies the presumption of innocence for any person charged with crime. Isn't that so?

A. Yes.

Q. Do you believe in that law? And so if his Honor shall tell you that the defendants in this case are presumed innocent under the law and you must accord to them that presumption, you will accept that law from the Court, won't you?

A. I will, sir.

Q. And you have also heard the Court charge or say, or the District Attorney or myself say that no defendant need [fol. 1594] prove his innocence, he may rest on the People's case?

A. Yes.

Q. And his failure to take the stand shall draw no unfavorable inference on your part toward him. You believe that, don't you?

A. Yes.

Q. That, too, is included in the enforcement of the penal law, with which you have sympathy. If the Court shall charge you that in this case, that neither defendant need offer a single bit of proof or testimony, either through themselves or through others, to prove their innocence or disprove an accusation against them, will you accept that law from his Honor?

A. I would accept it from his Honor.

Q. And then if you accept it in all good faith, you will not require any defendant to assert or prove his innocence, will you?

A. No.

Q. So that now, as you sit here, if the Judge should charge you that the defendants need not take the stand if they do not want to, need not prove their innocence, and you may not hold it against them—the language of the Court may be a little different—will you follow and accept that law implicitly?

A. I will do the best I can.

Q. That is all that is expected of anyone, to do the best that his brains allow him to do—right? You are willing to try to do the best you can?

A. I am willing to try.

Q. And so that you won't require any defendant here to prove his innocence, will you?

A. No, if the law states so.

[fol. 1595] Q. I assume now that the Court will charge you that; frankly, I can guarantee it will. So that this slight impression that you have you can lay aside and accept the law from the Court?

A. I will try to.

Q. Well, are you willing to undertake to do it?

A. Yes, I am willing to undertake to do it.

Q. You understand that it is not fair to judge a person by what you read about him?

A. I understand that, but you still cannot just dismiss something from your mind completely. Some of it just sticks there.

Q. Of course, every person has the right to feel the way he does toward a fellow man—rightfully or wrongfully; you understand that? What I want to know from you, sir, honestly: Can you dismiss this slight impression against the defendants, which you now have?

A. I will make every effort to do it.

Q. Is that the best you can say?

A. I am under oath; I cannot tell you anything more.

By the Court:

Q. 495 Schenectady is near what street?

A. Between Maple and Midwood Streets.

By Mr. Barshay:

Q. Would it require any proof at all on the part of the defendants, despite the instructions of the Court, for you to lay aside whatever impression you have?

A. It is pretty hard for me to answer that question. That would depend entirely on the progress and how the case [fol. 1596] continues, just what comes up which I do not know of.

Q. You know better than I do your own mind, sir. We cannot quarrel with you.

By the Court:

Q. I asked you the location, because reference has been made here to a restaurant on Eastern Parkway and Utica Avenue, which is a block from Schenectady Avenue.

A. That is right.

Q. Do you go there?

A. Occasionally.

Q. You and your family patronize that restaurant? It is an all-night restaurant?

A. That is right. It is about nine blocks from my home.

Mr. Barshay: No further questions.

The Court: Any other counsel?

Defense Counsel: None.

The Court: Sustained.

By Mr. Turkus:

Q. Mr. Eckstein, your address is listed on this board as being 136 Herkimer Street, is that right?

A. Right.

Q. What do they call that district?

A. Bedford section.

Q. Have you lived there for a number of years?

A. About four years.

Q. And before that where did you live, Mr. Eckstein?

A. At 754 Macon Street. I imagine that would be—that is between Ralph and Howard Avenue.

[fol. 1597] Q. Have you lived in Brooklyn a number of years?

A. Practically all my life.

Q. You are listed here on this sheet of paper as an etching assistant.

A. That is right.

Q. By whom are you employed?

A. Neil Gravure Printing Company.

Q. Where is their office?

A. 601 West 26th Street.

Q. Is that down toward the riverfront?

A. Yes, that is the Starrett-Lehigh Building.

Q. Did you hear the questions that were put to the other prospective talesmen about any connection in the Brownsville or East New York area of Brooklyn?

A. Yes, I did.

Q. Has life in the past brought you in connection with any persons in that area?

A. None whatever.

Q. Do you know any persons who are presently residing there?

A. I do not.

Q. May I go along with the understanding you have no connection there?

A. No connection.

Q. Never had any in the past?

A. No.

Q. There were other questions put to other talesmen about possible connection with the garment or clothing industry.

A. None whatever.

Q. The etching work that you do, does that have anything to do with distribution among these manufacturers of men's and ladies' clothes?

A. No, it is a printing process. We do the colored roto [fol. 1598] section of the *Sunday Mirror*, the *New York Times*, the *Boston Herald*, and other newspapers.

Q. So that may I go along now with the understanding that you have no connections by way of business or social

contacts with any persons interested in any part of the Amalgamated or clothing trades?

A. None whatever.

Q. Or Clothing truckers?

A. No.

By the Court:

Q. Is that the Scripps-Howard?

A. No, that is the Cuneo Printing Corporation.

By Mr. Turkus:

Q. Do you come into any contact with persons on the Brooklyn waterfront?

A. None whatever, except about fifteen years ago I was employed as cashier of the American-Hawaiian Steamship Company, and their pier was at Pier 6, Bush Terminal.

Q. Other than that, did you have any contacts in the Brooklyn waterfront?

A. None whatever.

Q. Is there any familiarity, for example, to the name of Albert Anastasio in your mind?

A. No, sir.

Q. I have spoken to other jurors about certain names of union officials, like Weinstein and Katz, and at one time Philip Orlofsky, a former union official. Was there any familiarity to any of those names?

A. No.

Q. Or any familiarity to any of the names, Curley Holtz, and those other individuals?

A. No.

[fol. 1599] Q. Since you received your jury notice did anybody speak to you about the case?

A. Just generally, such as the length of service.

Q. That has been limited to possibly being inveigled into jury serving?

A. Right.

Q. What newspapers do you customarily read?

A. Well, we receive all copies, naturally, of the *Mirror*, the *Times*. Personally, I read the *World-Telegram* and the *Herald-Tribune*.

Q. Are you married, sir?

A. Yes, sir.

Q. Do you reside with your family?

A. Yes.

By the Court:

Q. Are you a son of George Eckstein?

A No, sir.

By Mr. Turkus:

Q. I take it the type of work you do requires some special knowledge in your field, does it not?

A. Well, yes.

Q. And do you have any special vocational training?

A. No.

Q. Has it been training that you have acquired in the industry?

A. Yes.

Q. Are you in sympathy with the enforcement of the penal law of the States?

A. I am.

Q. Is there anything about the charge, the nature of the charge, namely, murder in the first degree, which would impair your ability to serve as a fair juror in the case?

A. None that I know of.

Q. Have you any conscientious or other scruple against [fol. 1600] capital punishment?

A. No, I have not.

Q. With respect to the nine lawyers in the case, do you know any of those nine lawyers?

A. I do not.

Q. Or anyone associated with them in the practice of law?

A No, sir.

Q. Do you know any lawyer who specializes in defending criminal cases?

A. I do not.

Q. Do you find any fault with the prosecutor of the county for accepting the testimony of one of the perpetrators of a crime and using it against the others in order to solve the case?

A. No.

Q. Do you find any fault with the prosecution which uses the testimony of one of the perpetrators, which is commonly known in the law as an accomplice?

A. I do not.

Q. With respect to the tests to be applied to that kind of an individual from the standpoint of whether he has a motive or whether or not you should believe him because of his past association with criminals and being steeped in crime himself, will you take the definitions of law from the Judge?

A. I will.

Q. And will you with common sense and understanding endeavor to apply that to the facts in this case?

A. To the best of my ability.

Q. Do you feel that you have any trouble in doing that?

A. No.

Q. Will you exercise your mental faculties to find out [fol. 1601] is this accomplice telling the truth about the complicity of these defendants in the murder? Will you do that?

A. Yes.

Q. And will that be one of the searches that you make in the case to find out is this perpetrator telling the truth about the participation of the others in the group with him?

A. Yes.

Q. Should the Judge charge you that there cannot be a conviction upon the unsupported testimony of a perpetrator of a crime, namely, an accomplice, will you follow that instruction of law?

A. I will.

Q. And should the Judge tell you that the prosecution need not substantiate each and every item of the testimony given by an accomplice, but that the jury may find corroboration from other or independent evidence which tends to connect the defendants with the commission of the crime, will you follow that instruction of law?

A. Yes.

Q. And will you endeavor conscientiously to apply it to the facts in this case.

Q. For example, if you are convinced beyond a reasonable doubt that the perpetrator who testifies against the others and tells you of the participation of this group in the killing of the victim and you believe that beyond a reasonable doubt, and you find beyond reasonable doubt further evidence tending to connect the defendants with the commission of the murder, will you reflect that finding in your verdict?

[fol. 1602] Mr. Climenko: I object to that question by reason of the use of the word "group."

The Court: Overruled.

Mr. Climenko: Exception.

A. I would.

Q. In other words, if you are satisfied beyond a reasonable doubt that the participant tells the truth about the participation and the part that each of the defendants played in the commission of the murder, and you are satisfied of that beyond a reasonable doubt and you find corroboration and supporting evidence there tending to connect the defendants with the commission of the crime, will you reflect those findings in your verdict?

A. I will.

Q. Something has been said here by one of the lawyers for Buchalter that Buchalter has been convicted of past crimes and sentenced by the Court to a long term in jail for the commission of those crimes. Would you, if accepted as a juror, relax your duty to find a proper verdict in this case solely because a defendant is incarcerated for commission of past crime?

A. I would not.

Q. Will you look to whether or not he is guilty or innocent of the Rosen murder from the evidence in the case?

A. I will.

Q. And will you decide that issue of guilt or innocence upon the evidence that you hear in the court-room?

A. I will.

[fol. 1603] Q. You may not be familiar, and undoubtedly you are not, with some of the types that you may see in the court-room. Will you nevertheless use common sense and understanding to find out are these individuals telling the truth when they testify?

A. To the best of my ability.

Q. And will you, by your verdict, Mr. Eckstein, endeavor to do justice in the case?

A. I will.

Q. Will you listen to fair and reasonable discussion by the other jurors in the case?

A. I will.

Q. In so far as allocation of evidence is concerned, that is, applying the evidence to the defendant or defendants

against whom it is given, will you endeavor conscientiously to apply the rules of law given by the Judge?

A. I will.

Q. For example, if obviously the testimony applies only to one defendant, will you apportion that evidence to that specific defendant?

A. I will.

Q. If, on the other hand, it applies to two or more or all three of the defendants, will you endeavor conscientiously to apply it in that fashion?

A. I will.

Q. In short, Mr. Eckstein, should The People of the State of New York, as represented by District Attorney O'Dwyer, in this court-room establish to your satisfaction beyond a reasonable doubt that Buchalter, Capone, and Weiss are three men who are guilty of murder in the first degree, will you say that in your verdict in this case?

A. Yes.

[fol. 1604] Q. Will you do that without fear or hesitation?

A. Yes.

Q. Mr. Bartholomew, you live at East 17th Street?

A. That is right.

Q. 1550, is that in the Kings Highway part of it?

A. Yes.

Q. Have you lived there for a number of years?

A. All my life.

Q. Are you married, sir?

A. Yes, sir.

Q. I cannot quite make out the listing here. It is "rep-
res." Does that mean a representative?

A. That is right.

Q. Would you tell me by whom you are employed?

A. New York Telephone Company.

Q. Then you represent the Telephone Company in installing telephones, that is, making arrangements for the installation with the customer?

A. Yes.

Q. In other words, you arrange for the installation of the phone as the customer's representative of the Telephone Company?

A. That is right.

Q. Have you been doing that type of work for a number of years?

A. Well, I have been on that approximately five years. I was off for a short while and came back on again.

Q. In the meantime you were, or were you, engaged in some other occupation?

A. I worked at the World's Fair for the Telephone Company.

Q. That is the kind of work that brings you into contact with various people and various walks of life; is that it? [fol. 1605] A. Yes.

Q. I take it that you have heard all these questions that I have asked about the garment district, the clothing district, and clothing truckers. Have you had any connection by way of business with people in that industry or in that area?

A. No, sir.

Q. Do you know anybody there or have you known in the past anybody engaged in the manufacture of ladies' and men's clothing?

A. No, sir.

Q. Or with any clothing truckers of any kind, nature, or description?

A. No, sir.

Q. Was there any familiarity to your mind with the names of the union officials that I mentioned?

A. No, sir.

Q. Has business in the past brought you into contact with anybody in the Brownsville-East New York area of Brooklyn?

A. Not to my knowledge. I cannot tell who is calling on the telephone.

Q. I do not mean it that way. By "contact", I mean actually going into the neighborhood and seeing people and discussing things with them there.

A. No, sir.

Q. So that you have no connections there by way either of business or any other contact in that area in Brooklyn?

A. No, sir.

Q. Does that hold true with the Brooklyn waterfront?

A. Yes, sir.

Q. Since you received your jury notice, did anybody speak [fol. 1606] to you about the case?

A. Nothing except mention the fact of the duration, "How long you are on," and the period of time I might be on.

Q. So that I can go along here understanding there has been no discussion about the merits of the case?

A. Yes, sir.

Q. I take it that you are in sympathy with law enforcement?

A. Yes, sir.

Q. And that you have no scruple, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. In so far as you are concerned, do you find any fault with the prosecutor who, in order to solve a case, will accept the testimony of one of the participants in the crime and use that testimony against the others?

A. No, sir.

Q. Do you find any fault with the prosecution which uses accomplice testimony?

A. No, sir.

Q. In applying the tests of what belief or what credibility you are going to give to a man who admits that he participated in this crime, will you use the tests that Judge Taylor says the law permits jurors to use?

A. Will I use the tests?

Q. That the Judge gives you.

A. Yes, sir.

Q. Will you consider all of the circumstances in connection with what may motivate or what may animate the individual from testifying, and anything about his past, to aid you in finding out if he is telling the truth?

A. Yes, sir.

[fol. 1607] Q. For example, will you consider that he may have committed past crimes, that he has committed possibly a vicious or immoral act or whatever things in abrogation there are of his believability, will you weigh all of those things in summing up is he telling the truth in this particular case?

A. Yes, sir.

Q. In looking every test over that you apply to the believability of an accomplice witness or one of the perpetrators of the crime, will you exercise your mental faculties to find out, Is this individual telling the truth about the perpetration of the crime and the participation of all the

defendants and himself as a group in the commission of the crime?

Mr. Climenko: I object to the question. It is bad in form and repetitious.

The Court: Overruled.

Mr. Climenko: Exception.

Q. Did you follow it?

A. I followed it, yes, sir.

Q. Without being extraordinarily blunt, may I just say it this way: Even though there may be individuals that we do not ordinarily see in our daily life, in the court-room, will you use common sense and understanding in finding out are they telling the truth about these defendants and themselves in this case?

A. Yes, sir.

Q. Now, with respect to that point, do you feel any differently because Buchalter has been convicted of crime and sentenced to a term of years in jail for the past convictions? Would you relax your duty as a juror in this case?

A. No, sir.

Q. If accepted as a juror in this case, will you discuss the case with common sense and reason with the other jurors?

A. Yes, sir.

Q. If after you hear all the evidence in the case and all the lawyers for the defendants tell you what they think of it and the prosecutor tells you how he views the evidence, the Judge tells you the law, you talk it over with the other members of the jury, and your mind is satisfied beyond a reasonable doubt that there are three guilty men at this bar of justice, will you say so in your verdict?

A. Yes.

Q. Will you say it without fear and without hesitation?

A. Yes.

Q. Mr. Fuller, do you live at 850 East 31st Street?

A. Correct.

Q. Is that East Flatbush or Flatbush proper?

A. Flatbush.

Q. Have you lived in Flatbush a number of years?

A. (Answer inaudible.)

Q. And prior to that time did you live in Brooklyn?

A. Yes, about twelve years I have been in Brooklyn.

Q. Did you live in some other district in Brooklyn?

A. I lived in the Heights and Park Slope.

Q. Is there any familiarity to your mind in the name of [fol. 1609] Weiss, people that may be in the automobile rental business or Chevrolet sales?

A. No.

Q. You are listed here as an engineer; is that correct?

A. That is right.

Q. And what kind of engineering is your profession?

A. Electrical.

By the Court:

Q. You live right at the water works?

A. No, sir, that is right adjacent to the Long Island Railroad.

Q. This is 850?

A. That is right. The water works is about Ditmas Avenue.

Q. You are near what street?

A. Avenue L. 850 East 31st, Avenue L.

By Mr. Turkus:

Q. Are you married, Mr. Fuller?

A. Yes.

Q. I take it you reside with your family?

A. That is right.

Q. Since you received your jury notice did anybody speak to you about the case other than any prospective length of time you might serve on the jury?

A. No.

Q. I take it by nature of your contacts that you have no connections with anybody in the garment or clothing trades?

A. No.

Q. Or in the clothing trucking business or with any of the unions that I mentioned?

A. No.

Q. Do you have any connection of any kind, nature or [fol. 1610] description on the Brooklyn waterfront or Brownsville-East New York areas?

A. I might have occasion to go some place on the job.

Q. What I meant by a connection was, was there any connection that you have had in the past, or presently do you maintain a contact in these districts which you maintain either by way of social or in business?

A. Well, in business I might contact a customer, say, for instance——

Q. Do you go into any of those districts with any frequency?

A. No.

Q. May I go along with the understanding that you are in sympathy with law enforcement?

A. That is right.

Q. Do you know any of the nine lawyers that represent these defendants?

A. No.

Q. Getting to the point of accomplice testimony, or the testimony of one of the perpetrators, do you find any fault with the prosecutor who, in order to solve a murder case, accepts the testimony of one of the perpetrators and uses it against the entire group?

A. No.

Q. Do you find any fault with the prosecution of an indictment wherein the testimony of one of the perpetrators is used against the others?

A. No.

Q. Will you apply all the tests that you apply to that type of witness pursuant to the instruction that the Judge will give you?

A. Yes.

Q. There will be things about the accomplice to the act [fol. 1611] complice's detriment naturally, the fact that he has been a perpetrator, one of the perpetrators, of the crime here charged, he may have been involved in other crimes, and all the things in derogation of him,—will you consider that as bearing upon his believability?

A. I did not follow that.

Q. You see, an accomplice is one who has participated in the commission of a crime, and I think that you have already told me that you find no fault with the District Attorney for using that testimony; is that right? And that you find no fault with the prosecution itself wherein the testimony of an accomplice is part of the case. The Judge will tell you that there cannot be a conviction upon the testimony of an accomplice standing alone, that there must be other evidence which tends to connect the defendants with the commission of the crime. Do you understand me as I say that?

A. Yes.

Q. Will you follow that instruction of law?

A. Yes.

Q. And apply it to this case to the best of your ability?

A. I will.

Q. Is your state of mind such that you appreciate that even a bad man can at times tell the truth?

A. Yes.

Q. Will you, if accepted as a juror in this case, devote your mental faculties to see whether the accomplice who tells you of his participation in the crime with these defendants is telling the truth about this group who participated in the crime? Will you do that?

A. Yes.

[fol. 1612] Q. And will you, when you apply your mental faculties to it, take into account that these may be kinds of persons that we do not ordinarily meet? Will you use common sense in weighing the believability with respect to this particular crime?

A. I will.

Q. Do you feel, as does Mr. Eckstein and Mr. Bartholomew, that the fact that one of the defendants has been heretofore convicted of past crimes, that that will play no part in your deliberation as to his guilt or innocence of this murder charge?

A. That is right.

Q. You will not relax or deviate from a proper verdict of jury service because of that present incarceration, will you?

A. No.

Q. With respect to weighing what testimony is to be allocated or apportioned to the defendants, if the Judge tells you that each defendant is entitled to a separate consideration in the case against him, will you do that?

A. Yes.

Q. And in the case where obviously part of the testimony applies only to one particular defendant, will you apply that portion of the testimony specifically to that defendant?

A. Yes.

Q. With respect to the other testimony, which may apply to two or all of the defendants, will you allocate that portion which applies to all of them to the three of them?

A. Yes.

Q. In other words, will you use common sense and understanding in weighing the evidence as it applies to each specific defendant in the case?

A. I will.

Q. If accepted as a juror, will you talk the case over sensibly with the other jurors?

A. Yes.

Q. And will you endeavor by your verdict to reflect justice in the result?

A. Yes.

Q. If the prosecutor of the county, Judge O'Dwyer, establishes to your satisfaction by the credible evidence of persons in this court-room that these defendants, Buchalter, Capone, and Weiss, are three guilty men, guilty of murder in the first degree, will you say it in your verdict?

A. Yes.

Q. Will you have any fear or hesitation in pronouncing that verdict?

A. No.

Q. Mr. Gill, is the address 818 Fifty-seventh?

A. That is right.

Q. Pardon me. I forgot if I asked you if you knew Judge O'Dwyer, the District Attorney of the county. Do you, Mr. Bartholomew?

A. No, sir.

Q. Do you, Mr. Eckstein?

A. No, sir.

Q. Or do you know any Assistant District Attorney on the staff?

A. (No answer.)

Q. The reason I brought that up, you live in the Bay Ridge district, don't you?

A. That is right.

Q. Do you know Judge O'Dwyer?

A. I do not know him personally, no; I have heard of him.

Q. Have you lived in the Bay Ridge district for a number [fol. 1614] of years?

A. Bay Ridge and South Brooklyn all my life.

Q. And you are listed, sir, as a commercial agent.

A. Yes.

Q. Is that for some utility?

A. Savan-ah Line, ocean steamships.

Q. Does your business bring you into contact with people on the Brooklyn waterfront?

A. I represent the Savan-ah Line on Manhattan Island, 23rd Street and Canal Street on the East River and North River, and I also represent them throughout the entire Borough of Brooklyn.

Q. Is the name of Albert Anastasio a familiar name to you?

A. No.

Q. In representing the company, do you deal with the shippers of merchandise?

A. Shippers and receivers, yes.

Q. And is it part of your duty to see that the goods is loaded on the boat and unloaded?

A. (Answer inaudible.)

Q. And that it is delivered to the boat and delivered from the boat to its point of destination?

A. That is right.

Q. Does your business bring you into contact with any union officials?

A. Not often.

Q. I spoke to the other jurors, Mr. Eckstein, Mr. Bartholomew, and Mr. Fuller about possible connection or acquaintance with anybody in the Amalgamated Clothing Workers of America. I take it you have no connection?

A. No.

Q. Or with any clothing truckers?

A. Well, we are represented on Manhattan Island— [fol. 1615] (inaudible). They do pick up freight for us from wholesale clothing dealers and make deliveries to us at our pier, Pier 26.

Q. I was referring to people who are engaged in clothing trucking industry. That is a specific type of work where they truck men's clothes.

A. I have no connection there whatsoever.

Q. May I go along, then, with the understanding that except as you have indicated to me, you have no connection on the waterfront, the Amalgamated Clothing industry or Brownsville-East New York section of Brooklyn, except as you have told us?

A. No, I cover the Brooklyn waterfront, that is, solicitation of freight. I have a number of accounts at the New York Dock Terminal and Bush Terminal and waterfront area.

Q. And you have been doing this for the past twelve years?

A. Twelve years, yes.

Q. And your contact there, it has been part of your duty and part of your business as representative of the Savan-ah Line?

A. That is right.

Q. I have mentioned the name of the nine lawyers that represent these defendants at the bar. Do you know any of those nine lawyers?

A. No.

Q. Do you know anyone connected with their law offices?

A. No.

Q. Or any lawyer who specializes in the defense of criminal cases?

A. No.

Q. May I go along with the understanding that you are in [fol. 1616] sympathy with the enforcement of the law?

A. Yes.

Q. And may I go along with the understanding that you three gentlemen, too, and you, Mr. Gill, will give to the defendants every legal and constitutional right the Judge says they shall have?

A. Yes.

Q. Do you feel the same as the other three jurors, Mr. Eckstein, Mr. Bartholomew and Mr. Fuller, about accomplice testimony, or do you differ from the way they feel about it?

A. I think you will have to make that a little clear.

Q. I will go along with you this way: Do you find any fault with the District Attorney of the County, Judge O'Dwyer, who, in order to solve a murder case, accepts the testimony of one of the perpetrators of the crime and uses that against the others who were in the group?

A. Have to use that, yes.

Q. You find no fault with the District Attorney doing that?

A. No.

Q. Will you find any fault with the prosecution for employing the use of that kind of testimony?

A. No.

Q. With respect to the tests that you apply to the believability of one of the perpetrators of the crime, will you always keep in mind and will you use your mental faculties

to find out is this accomplice telling the truth about the group participation of these defendants and himself in the murder?

A. I will.

Q. And even though you may see here individuals that [fol. 1617] you do not ordinarily meet, will you use common sense and understanding in weighing the issue in this murder case?

A. I will.

Q. Will you take the law in its every aspect exclusively from Judge Taylor?

A. Yes.

Q. And will you endeavor conscientiously to apply it to the facts in this case?

A. I will.

Q. With respect to the allocation of evidence, do you feel, as do the other three jurors, that obviously if the testimony applies only to one defendant, you will apply it to that specific defendant?

A. I will.

Q. That if, by the very nature of the testimony, it applies to all three defendants or two of the three, you will apply it in the way which common sense tells you the testimony should be applied?

A. Yes, sir.

Q. If accepted as a juror in the case, will you listen to fair argument?

A. I will.

Q. And will you discuss the case—and I do not want to repeat it; I do not want to be too blunt and of course not offensive—will you use common sense in weighing this issue of guilt or innocence in this case?

A. Yes.

Q. After you have heard all the evidence in the case, should you hear the three lawyers—and I say “should”, because they may or may not repeat some of the arguments—but if three of the lawyers should use the same argument, that a man, for example, is an accomplice, would the fact [fol. 1618] that you heard the argument three times give it three times the force with you?

A. Yes, sir.

Q. Maybe I misled you. I do not want to get you into that. We will do it over. You see, it may be, because there are nine lawyers in the case, three representing each de-

fendant, each of the defendants has a right to have the jury listen to his lawyer on summation. Is that clear to you?

A. Yes.

Q. In other words, the lawyer gets up and he draws inferences from the testimony. He may argue to you, "I view the case this way." The second lawyer, for another defendant, who has, of course, a proper and a legal right to argue the case to the jury, he may say, "I see it the same way as does my friend, the other defense lawyer," and the third one may get up and say, "I see it the way those two do." Just because you hear an argument three times, will that be three times as strong in your mind?

A. I will use my best judgment.

Q. That is it. So that no matter how many times—and I don't say that they will repeat it, but there may, in the nature of things, be a repetition of argument, you will use your best judgment in finding out this issue of guilt or innocence; is that right?

A. Yes.

Q. Have you any brothers in Brooklyn, Mr. Gill?

A. I have one brother.

Q. Do you know what his business is?

A. Maritime electrical.

Q. Do you recall his first name?

A. John J.

[fol. 1619] Q. Does he live in Bay Ridge?

A. He lives in Flatbush.

Q. Mr. Gill, assuming that you have heard all of the facts in the case and you have heard all of the defense lawyers draw the inferences and the arguments that they draw from the testimony, and you hear the prosecutor draw his inferences from the testimony, and then the Judge tells you what the law is, and you and the other jurymen go into the jury room, into the sanctity of the jury room, and you talk the case over, and your mind is satisfied beyond a reasonable doubt that there are three guilty men, three men guilty of murder in the first degree, would you be afraid to say so by your verdict?

A. I would not.

Q. Would you have any hesitation in rendering that verdict?

A. No.

Q. Is there anything in your present connection of any nature or description that would affect your ability to render a verdict in consonance with justice?

A. I know of none, no, sir.

Mr. Barshay: May we have a recess for a short while, your Honor?

The Court: A ten-minute recess. Do not discuss the case. Defendants remanded.

(A short recess was thereupon taken.)

[fol. 1620] (IVER BAE was examined as to his qualifications.)

By Mr. Barshay:

Q. Mr. Bae, do you read any newspaper?

A. Yes.

Q. Do you read the *Mirror*?

A. No, sir.

Q. Do you read the *News*?

A. Occasionally.

Q. Suppose you tell me what newspapers you do read.

A. The *Tribune* and the *Journal*.

Q. Do you read them very often?

A. Yes, sir.

Q. Did you read the life of Judge O'Dwyer in the *Journal*?

A. No, I saw the heading.

Q. It ran for a considerable time, in instalments.

A. No, sir, I did not read it—a few paragraphs.

Q. Day after day?

A. No.

Q. Did you read anything at all in those paragraphs with respect to the defendants in this case?

A. No.

Q. Did you ever read anything about them at all?

A. I have, I read something about them; I don't know where.

Q. Before you received your notice?

A. Yes, sir.

Q. Did you continue to read about them after you received your notice?

A. Not in regard to the case.

Q. Did you form any impression with respect to any one you read about?

A. Yes.

Q. You got some idea about them, didn't you?

A. Yes.

Q. And you carried that idea with you when you came [fol. 1621] here as a prospective juror?

A. Yes.

Q. And that idea about them became stronger as you sat here and listened to the other jurors being chosen?

A. No, sir.

Q. It remained the same?

A. It don't have any bearing on it.

Q. The impression you had gained, was it unfavorable to the defendants?

A. It is.

Q. And would it require some evidence to remove?

A. Yes.

Q. If the Court should tell you that the defendants need not prove their innocence, would you expect some evidence on their behalf, from them or from witnesses on their behalf, to remove that impression?

A. Yes.

Q. You would insist on that even though the Court says they do not have to?

A. I believe so.

Q. That is your honest opinion right now?

A. Yes, sir.

Q. That unless they offer evidence, that impression which you say is detrimental to them will not eradicate itself from your mind?

A. No, sir.

Q. Is that right?

A. Yes, sir.

Mr. Barshay: I challenge for cause.

The Court: Try the challenge.

IVER BAE, No. 2673, residing at 920 Fifty-second Street, Brooklyn, New York, was sworn on the challenge.

By Mr. Barshay:

Q. Now that you are under oath, will you answer the [fol. 1622] questions in the same way if I ask them in the same way?

A. Yes, sir.

By Mr. Rosenthal:

Q. You remember the answers you gave the other lawyer?

A. Yes, sir.

Q. Of course, the impression which you have goes to the guilt or innocence of the defendants; is that true?

A. Yes.

Q. On this charge?

A. Yes, sir.

Mr. Talley: No further questions from any counsel. We press the challenge.

Mr. Turkus: No questions for the prosecution.

The Court: Challenge sustained.

CLINTON T. ECKSTEIN, No. 2752, residing at 136 Herkimer Street, Brooklyn, New York, a talesman, was then examined as to his qualifications.

By Mr. Climenko:

Q. Mr. Eckstein—is that the proper pronunciation?

A. Yes, sir.

Q. When Mr. Turkus asked you questions he asked you whether you had ever served on a jury before. I now ask you that question.

A. Yes.

Q. How many times?

A. Supreme Court, City Court; I also was called once, I believe, by one of the Judges—I don't know which court. [fol. 1623]

Q. In the City Court, that was a civil case?

A. Yes, sir.

Q. And presumably in the Supreme Court, the same?

A. Yes, sir.

Q. Both in Brooklyn?

A. Yes, sir.

Q. And in both of those cases did the cases extend to the point where the Court charged the jury on the law in the case?

A. Yes, sir.

Q. In these civil cases, if you recall, did the Court charge you and the other members of the jury that the plaintiff, in order to recover, had to sustain a fair preponderance of proof, and that a verdict is given on a fair preponderance of proof?

A. As far as I recall.

Q. You recall that rule of law?

A. The Judge gave the usual charge.

Q. Assuming that in this case, a criminal case, the Court should charge you by a different rule—that there can be no conviction unless there be proof to your satisfaction of guilt beyond any reasonable doubt; would you adopt that?

A. Yes, sir.

Q. Of course, you understand there is a difference between those two rules?

A. Yes, sir.

Q. In other words, there is a difference between proving a case by a fair preponderance of proof and proving it beyond a reasonable doubt?

Mr. Turkus: I object. That is a legal question.

The Court: Objection sustained.

[fol. 1624] Mr. Climenko: Exception.

Q. Do you understand, assuming the Court should charge you that there can be no conviction except upon proof beyond a reasonable doubt, that you as a juror, if you are selected as a juror, will follow that instruction?

A. Yes, sir.

Q. Even though it may differ from the rule you might have heard in the civil case, you would have no quarrel with it?

A. On that point I don't recall anything; I accepted the charge as the Judge presented it at that time. I recall nothing of that charge. This case is entirely by itself, separate. I don't see any connection with it.

Q. I grant you that. The point is, there is nothing in your experience in any court-room which would in any wise invade your ability to follow such instruction?

A. Not as I know of.

Q. Have you read about this case?

A. Well, to be perfectly frank, what I know about this case is reading about the Dewey investigation some time ago. As far as this particular case goes, I recall reading nothing on this matter.

Q. Did you read about any of the defendants in this case?

A. Yes, in a general way.

Q. Do you recall where you read about any of the persons named in this case?

A. I cannot tell you that now.

Q. In consequence of any or all of your reading of the case, do you have any opinion with respect to any of the [fol. 1625] persons in the case?

A. Well, I have a general opinion, yes; I don't see how anyone can be otherwise.

Q. Is that an opinion which is adverse to any of the persons in this case?

A. Naturally.

Q. It is a detrimental opinion?

A. Naturally.

Q. You have that opinion now?

A. Yes.

Q. As I am sitting here and I am asking you questions; is that correct?

A. Yes.

Q. It is an opinion which you have entertained for some time?

A. Yes.

Q. It had its origin when you read about some activities by Mr. Dewey?

A. Yes.

Q. It goes back a few years?

A. Yes.

Q. So over that period you have had and still have right now an attitude or opinion which is adverse to one or more of the persons in this case?

A. Well, if you put it that way, yes.

Q. No, I don't want to proffer any language for you to adopt; I am only trying to get the state of your mind. Is that a fair statement of your mental condition about one or more of the people in this case?

A. I think it is.

Q. Now, in consequence of that being a fair statement of the condition of your mind, would it require the production of some proof on behalf of the person or those persons in order to establish that point of view you have?

[fol. 1626] A. No, sir, not necessarily.

Q. If you were sworn at this time as a juror, would you continue to have that point of view about one or more of these defendants?

A. Yes and no; I would endeavor to judge the case to the best of my ability.

Q. But you would realize that in making that endeavor you would start in with a handicap?

A. Naturally.

Q. And that handicap, if I can put it in these words—stop me if I am not doing it accurately—that handicap refers again to that state of mind you have about one or more of these defendants?

A. Yes.

Q. And this is what has been called a capital case?

A. Yes, sir.

Q. You understand what those words mean, I am sure.

A. Yes, sir.

Q. Now, that being so, you don't seem proud about your ability to act with complete impartiality as a juror in this case?

A. Well, I would not put it that way, no.

Q. You do have this adverse opinion about some of the persons in the case?

A. Well, it is a general opinion; it is natural every law-abiding citizen has an opinion of that kind.

Q. And you feel, of course, that you are a law-abiding citizen?

A. As far as I know, yes, sir.

Q. As a law-abiding citizen you entertain an opinion adverse or prejudicial to one or more of the persons on trial [fol. 1627] in this case?

A. Yes, sir, a general impression.

Q. A general impression?

A. That is from what I gathered in the newspapers; naturally I understand you cannot believe everything you read in the newspaper, but nevertheless, we have to use our thoughts, as a guide.

Q. You have used, even though you discounted some of the things you read in the newspaper, you have used the remaining part as a guide in forming an opinion?

A. Well, an impression, not an opinion.

Q. Whether the word is impression or opinion, it is one detrimental to one or more persons on trial in this case?

A. Yes, sir.

Q. That is an opinion which you have entertained for a long time?

A. Well, that is an opinion I have entertained since I know the difference between right and wrong.

Q. Having that opinion and being guided, because of your knowledge of the difference between right and wrong, you have an opinion adverse to one or all of these defendants?

Mr. Turkus: I object to that as speculation.

The Court: It seems to be repetition. He has already said so. He already said he has an impression adversely.

Q. In consequence of your opinion or impression, would you require the production by the District Attorney of a little less evidence against one or more of these defendants in the course of the trial of this case?

[fol. 1628] Mr. Turkus: I object. The burden of proof is a legal question.

The Court: We are entitled to know if the gentleman is able to put that impression to one side and judge the case on the evidence. Objection overruled.

The Witness: Yes, sir, I believe I could set it aside.

Q. In view of the fact that you harbor that attitude with respect to one or more of the persons on trial in this case, would you, in consequence of the fact that you have that feeling, impression, or opinion, require the District Attorney to produce less evidence than he would otherwise be required by your mind to produce in order to demonstrate the guilt of one or any of these persons?

Mr. Turkus: I object. The juryman can lay aside his impression, he says. It is a legal question now.

The Witness: No. That is, by that I mean, as you put it, I would require equal evidence on both sides. I would not necessarily accept evidence in preference to the defendants'.

By the Court:

Q. The question is whether you would be influenced by your impression by reason of what you read.

A. No, sir, I don't think I would.

By Mr. Climenko:

Q. Did I understand you to say you would require the production of equal evidence on both sides?

[fol. 1629] A. Well, in a sense, yes.

Q. Now, may I know what you mean?

A. In amount, I would say, one against the other.

Q. Well, what would you weigh on the one side as against the other?

A. I would have to hear.

By the Court:

Q. Mr. Eckstein, the law does not require the defendant to give any evidence.

A. I understand that. I am just speaking in general terms.

By Mr. Climenko:

Q. Now, would the impression you entertain about one or more of the persons on trial in this case, inure to the detriment of those persons during the course of this trial?

A. It would not necessarily.

Q. When you say "not necessarily," do you imply that you entertain some doubt?

A. Only what I said before.

Q. Disregarding what you said before, I ask you that question: Would the prejudice or the opinion you have, or the impression you have with respect to any of these defendants, inure to their detriment in your mind during the course of the trial of this case?

A. It would not.

Q. Then that opinion which you have, or that impression, that detrimental impression, does not affect your thinking about any of these defendants at all?

A. No, sir; I would try to weigh the evidence to the best of my ability.

[fol. 1630] Q. In weighing the evidence to the best of your ability, would one of the components in your mind be that detrimental impression you had about one or more of these persons on trial?

Mr. Turkus: Objected to as already answered in the negative.

The Court: Sustained as repetitious.

Mr. Climenko: Exception.

Q. About how many articles did you read about one or more of these persons on trial?

A. I really cannot say; I don't recall.

Q. When did you first form the opinion which you say is detrimental, or this impression which is detrimental to one or more?

A. During the Dewey investigation. I believe one of the defendants had disappeared, and at that time they could not locate him.

Q. At that time you formed a detrimental impression of that particular person?

A. Well, naturally.

Q. Since then have you read anything about that particular person?

A. Yes, sir, generally; nothing pertaining to this case.

Q. At the present time you hold that detrimental impression of that person?

Mr. Turkus: Objected to as already answered.

The Court: Sustained as repetitious.

[fol. 1631] Mr. Climenko: I challenge the juror for implied bias.

The Court: Try the challenge.

CLINTON T. ECKSTEIN, a talesman, was sworn on the challenge and examined:

By Mr. Climenko:

Q. Now that you have been sworn, I direct your mind to those questions I put to you about your reading about one or more of the persons on trial in this case, and I also direct your attention or invite your attention to the answers you made to those questions. I am now asking you this question: Assuming I were now to repeat all those questions

on that subject, would your answers be the same now that you are under oath?

A. They would.

Mr. Climenko: I press the challenge.

[fol. 1632] By Mr. Rosenthal:

Q. You say that the *Mirror* is delivered to your place of business?

A. Yes, sir.

Q. You say that here, under oath, you have never read any articles in the *Mirror*?

A. No, just generally, naturally I glanced through the *Mirror*; I did not buy it.

Q. No, but it is delivered to your place of business.

Mr. Turkus: Objected to as argumentative.

Mr. Rosenthal: He does not have to buy it to read it. Some people pick it up in the court-room. I am asking him the question as to whether he reads it. I will withdraw the question.

Q. Irrespective of whether you buy the *Mirror* or you get it through delivery to your office, do you read the *Mirror*?

A. I do not.

Q. Did you just state to me a moment ago that you glance through it generally?

A. I glance through it casually; to be perfectly frank with you, I look at the comics, that is about all.

Q. You said in answer to Mr. Climenko first that there was an opinion that you had. Aren't those your words?

A. An opinion or an impression, whichever you—

Q. I am not trying to quibble with you; I am trying to find out whether or not I am correct in my assumption that the word which you used in answer to Mr. Climenko's [fol. 1633] question when he first directed it to you was that you had an opinion which was adverse to one or more of the defendants.

The Court: He said "impression."

Mr. Rosenthal: I wrote it down when he said it. The word he first used was "opinion"; subsequently, in answer to your Honor's question, when you said, "impression," he said "impression."

By the Court:

Q. Do you recall the word that you used?

A. Yes, sir; as I recall it I said an impression or opinion.

Q. Have you any opinion as to the guilt or innocence of these defendants on this charge?

A. Well, I said I had a general impression.

Q. Have you any opinion as to this charge?

A. No, I recall nothing whatever about this crime.

Q. So far as you recall, did you ever read anything about this particular charge?

A. No, sir, I believe I said I did not.

By Mr. Rosenthal:

Q. In answer to Mr. Climenko you first said you believed you could put your impression aside.

A. Yes, sir.

Q. That meant, didn't it, according to your interpretation of the English language, that you had—that there was a doubt in your mind as to your ability—isn't that what you meant by that expression?

A. Well, what I meant was this—I said it several times—that I would endeavor to the best of my ability to weigh [fol. 1634] whatever evidence was presented by both sides.

Q. Do you remember saying that you did not think, you did not think you would be influenced by the opinion—weren't those your exact words?

A. Yes, sir.

Q. Doesn't that imply, in your interpretation of the English language, a doubt as to your ability to put such an opinion aside?

A. Well, I think, if you want to draw it that fine, yes.

Q. I am asking you for your interpretation. Your answer is "Yes"? Did you just say "Yes"?

Mr. Turkus: I object to the argument. The juror said if that is the way he wants to interpret it.

The Court: The question was one appertaining to the meaning of language, as to what was in the witness's mind—the particular language he used.

Q. When you said in answer to Mr. Climenko that you don't think you would be influenced, did that imply in your mind a question of doubt as to your ability?

The Court: Any doubt?

The Witness: Well, to be perfectly frank with you, putting the question that way, this may be confused.

By the Court:

Q. Now, do you think it is necessary that this case should be decided by twelve impartial men upon all of the evidence [fol. 1635] alone and without any prejudice whatsoever?

A. Well, I believe I said that before.

Q. You are stating what you think or believe, but you have not stated whether or not you will definitely put aside your impression and decide the case fairly upon the evidence disclosed.

A. If I recall rightly, I did say that.

Q. Is that your present mental attitude?

A. Yes, sir.

Q. Will it stick?

A. Certainly.

By Mr. Rosenthal:

Q. At the time you made that statement you said you would view the evidence on both sides.

A. Naturally.

Q. You have been in court for how many days listening to the questioning of the jurors?

A. To be perfectly frank, it has only been a very few days; I have been excused most of the time.

Q. Have you heard the Judge repeatedly tell the jury-men that are in the box and were in the box that at no time in any criminal trial is it necessary for any defendant to offer any proof concerning his innocence of a criminal charge? Have you heard the Judge repeatedly mention that?

A. Yes, sir.

Q. Now then, because of your frame of mind and because of the impression which you gained, isn't it true that if the defendant saw fit, through his attorney, not to offer any evidence offsetting what the District Attorney may offer, that that impression which you gained would be stronger [fol. 1636] and sway you in determining the guilt or innocence of the particular defendant who failed to offer evidence? Isn't that true?

A. Not necessarily.

Q. No, not necessarily again implies a doubt in your mind, doesn't it?

A. Well, it might. You might think that it might imply a doubt.

Q. It is not what I think, it is what you think in answering my questions, not what I think: doesn't your answer to my question—and we are not questioning your integrity—any man is entitled to an opinion, you know that—you should not be afraid to voice an opinion. Now, is your opinion, as voiced by your answer to me, "Not necessarily," or does it imply a doubt as to your ability—that is all we are asking you, nothing else—

A. If you say it does, it does.

Q. I am not saying it does at all. I am not under oath. I am simply asking you a question: Do you say it does? That is the question. As evidenced by your answer, "Not necessarily."

A. I will change my answer to "No," then.

Mr. Rosenthal: I renew the challenge, on the ground of implied bias.

By Mr. Turkus:

Q. I will try to simplify it, if I can: You say you will weigh the evidence on both sides in this case?

A. Yes, sir.

Q. And after having weighed the evidence you feel that [fol. 1637] this impression you have may be confirmed or dissipated?

A. I feel—I just changed my answer from "Not necessarily," to "No."

Q. You don't mean to answer "No" to my question—you say after—

Mr. Rosenthal: I must object to that question.

The Court: That is a difficult objection to rule on, because the question is a little subtle.

Mr. Turkus: I will withdraw it.

The Court: The talesman said that his answer on the question of being influenced by an impression is "No." Now you ask him if he would lay it aside upon receipt of the evidence. That would be a contradiction of exactly what he just said. I say the question is subtle, because it might tend to cause a perfectly honest, intelligent talesman to blunder into a confused answer. Objection sustained.

Q. You used the expression that you would weigh the evidence on both sides.

A. Yes, sir.

Q. You mean to convey by that that after you had weighed the evidence you might be able to put aside this impression you now have?

The Court: You mean you would retain the impression until you got all the evidence?

A. No, sir. I stated before, my answer was "No," I [fol. 1638] would weigh the evidence as it was presented.

Q. Without regard to your impression?

A. Yes, sir, that is what I meant. I don't know whether they understood me. Perhaps they did not.

By Mr. Talley:

Q. Now, are we all out of step but you?

The Court: Don't answer that.

Q. You said you had an impression.

A. Yes, sir.

Q. You designate it "impression" or an "opinion"?

A. Yes.

Q. You have it now as I address you—you have what you call an impression or an opinion?

A. Yes, sir.

Q. And something has got to happen in the course of this trial to either remove or confirm that impression; isn't that so?

A. Yes, sir, naturally.

Q. May I know what has got to remove or confirm that impression?

A. That I cannot say; I don't know.

Q. Can you suggest anything else than evidence in the case that will remove it or confirm it?

A. Such as anything else, do you say?

Q. Yes, other than testimony or evidence.

Mr. Turkus: I object to the form of the question.

The Court: Sustained. I do not understand it.

Mr. Talley: Exception.

Q. What do you expect to remove that impression you [fol. 1639] have in your mind, or, if it is not removed, what will confirm it?

Mr. Turkus: I object, it is a double question.

The Court: The talesman can say whether or not he can put it aside and disregard it; he has already answered that question.

Q. Who do you expect will remove that impression, if it is removed, the prosecution or the defense?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Talley: Exception.

Q. Is it not a fact that you would require some proof in order to remove from your mind the impression which you now have?

Mr. Turkus: Objected to as already answered.

The Court: He has not said he could remove it; he said he could disregard it.

Mr. Talley: May I have an answer to my question, or does your Honor sustain the objection?

The Court: The objection is sustained.

Mr. Talley: Exception.

Q. Do you require the defendants or any of them to give testimony to remove that impression?

Mr. Turkus: I object.

The Court: Answer yes or no.

The Witness: Yes.

[fol. 1640] The Court: Challenge sustained.

(Mr. Bartholomew was then examined as to his qualifications to serve as a juror.)

By Mr. Climenko:

Q. I understand you are employed by the New York Telephone Company?

A. Yes, sir.

Q. I do not remember if the question was asked whether you have served on a jury before you were called here.

A. The question was not asked, but I answered yes; I have.

Q. What court?

A. The Supreme Court. I did not serve, but I did serve in the Municipal Court.

Q. That was a civil case?

A. Yes, sir.

Q. You never have served on a jury in a criminal court?

A. No, sir.

Q. You understand that the mere fact that a person has been indicted, would that fact in and of itself be an indication of guilt?

A. No.

Q. The indictment is merely a paper which makes an accusation?

A. Yes.

Q. And assuming the Court shall instruct you the mere fact that the defendant is charged by indictment is no proof in any sense that he is in any sense guilty, would you have any difficulty in accepting that instruction of law?

A. No, sir.

Q. Of course, you realize the Grand Jury may indict an innocent man?

A. I don't ever judge the intent of what the Grand Jury [fol. 1641] does in regard to an indictment except for what my father told me, who has served on these Grand Juries, that they hear one side of the case, that is all.

Q. The defendant is not afforded an opportunity to be heard before that body?

A. Yes, sir.

Q. So that the Grand Jury is composed of Grand Jurors who hear only the evidence offered to it by the District Attorney?

Mr. Turkus: Objected to as repetitious.

The Court: It is incompetent. Sustained.

Mr. Climenko: Exception.

Q. Did you read about this case before you were summoned here for jury duty?

A. No, sir.

Q. Had you ever read about any of these defendants?

A. Not to my knowledge; I do not recall reading about them.

Q. Did you read during the course of this summer about District Attorney O'Dwyer and his career, as it was depicted in the pages of, I think, the evening *Journal-American*?

A. No, sir.

Q. I take it you did not read anything in the *Mirror* during the course of the summer?

A. No.

Q. You don't generally read the *Mirror* anyhow?

A. No, sir. As a matter of fact, I don't buy any paper at all. That is a frank statement. I have had occasion to look at the *Tribune* while I am in the office.

Q. That is perfectly reasonable. I guess we understand [fol. 1642] each other. The *Tribune* is the only paper normally you do see, and you see that only for a little while?

A. Yes, sir.

Q. You have no impression about any of the persons on trial in this case?

A. No, sir.

Q. You have heard Mr. Turkus asking about accomplice testimony?

A. Yes, sir.

Q. Do you have any prejudice against a witness simply because he is an accomplice?

A. No, sir.

Q. Assuming, however, that the Court should instruct you, as a matter of law, that in the event you were chosen as a juror here it would be your duty and the duty of everybody else in the jury box to regard any statement made by an accomplice, even though made under oath, with caution and with suspicion, and with great care; would you have any difficulty in following that instruction on the law?

A. No, sir.

Q. In other words, if you were told that you were to be more wary about accepting the truthfulness of the statement of a man who takes the stand and says, "I was a party to this crime," if you were told it was your duty as a juror to attach a different standard of examination, a more stringent and careful standard of examination in relation to what such a man tells you, would you have any difficulty in accepting your instructions on the law?

Mr. Turkus: Objected to as repetitious.

By the Court:

[fol. 1643] Q. Just yes or no—would you weigh such evidence with caution?

A. Yes, I would.

Q. Scrutinize it carefully?

A. Yes.

Q. And accept it only if you believed it to be true?

A. Yes.

Mr. Climenko: Your Honor, may I request your Honor to permit the talesman to finish his answer that he was about to give?

The Court: No.

Mr. Climenko: Exception.

Q. Supposing that a witness takes the stand, is offered as a witness by Mr. Turkus, the Assistant District Attorney, would the fact that his admission to the witness chair, so to speak, was sponsored by the Assistant District Attorney, motivate you to be influenced in his favor?

A. No, sir.

Q. It would not have any effect at all?

A. No, sir.

Q. Supposing a man takes the stand and admits he has committed perjury. Now, in other words, he admits that on prior occasions he took the solemn oath to tell the truth in the court and he immediately proceeded to violate it by telling an untruth in that court—he says, “That is part of my record,” “That is one of the crimes I have committed.” Supposing such a person takes the stand here, will you, in appraising the believability of his testimony, take into account the fact that he is an admitted perjurer?

A. I would consider it very carefully—it would not influence my attitude.

Q. You would listen to it and you would take into consideration the fact that maybe he is lying now, because he admits he lied on prior occasions?

Mr. Turkus: Objected to as already answered.

The Court: Objection sustained.

Mr. Climenko: Exception.

Q. Is the fact that such a witness admits he has committed perjury in the past a factor you would take into consideration in passing on his trustworthiness?

Mr. Turkus: Objected to as already answered.

The Court: Objection sustained.

Mr. Climenko: Exception.

Q. Supposing that an accomplice were to take the stand and admit he, that accomplice, has in the past committed many other crimes, committed perjury, would you take that into consideration in passing on the trustworthiness of the statement of that witness?

Mr. Turkus: Objected to as already answered.

The Court: The Court already sustained objection to that as repetitious.

Mr. Climenko: The question I am interested in is an accomplice who has committed perjury.

The Court: Please abide by the ruling of the Court. I [fol. 1645] do not wish to debate with you on whether the rulings are right or not. Take your exception and ask on some other point.

Mr. Climenko: I take an exception to the ruling and I object to your Honor's comment.

Q. Now, suppose that the District Attorney attempts to produce as a corroborating witness; that is, one who attempts to support an accomplice witness, a man who admits on the stand that he has committed many crimes in this jurisdiction of Kings County and that he has not been prosecuted for those crimes, would you take into consideration the motive of that so-called corroborating witness in passing on his credibility?

A. I don't understand what you mean by motive.

The Court: Getting immunity. If a witness is getting immunity for turning State's evidence, will you take that into consideration in determining if he had a motive for telling an untruth?

The Talesman: No, sir.

By the Court:

Q. You would not take that into consideration? The law requires that you should.

A. I did not quite understand.

Q. The law says that you should scrutinize every witness's testimony carefully in determining whether or not it is true, because the man is a criminal and admits he has turned State's evidence and he has not been prosecuted himself, his motive for giving his testimony may have a strong bearing upon whether or not he is telling the truth. [fol. 1646] A. Yes, sir, it may have a bearing, but I am not in a position to scrutinize it.

Q. Would you consider it in determining whether or not you believed it?

A. Yes, sir, I would.

By Mr. Climenko:

Q. You would take into consideration his motive for immunity, in other words?

Mr. Turkus: I object. He said he would take it into consideration. It is repetitious.

Q. You would take that into consideration?

A. Yes.

Q. Now, if you were selected as a juror in this case, assuming that the Court should instruct you that it would be your duty as a juror to pass on the facts of the case and do that without any reference to what you thought somebody else outside the jury box might feel about the case, would you have any hesitation or reservation about your ability to do that?

A. No.

Q. Assuming that at the close of the case and after deliberation with other members of the jury, you entertained a reasonable doubt about the guilt of the defendants or any one of them, and your fellow jurors were unable to dissuade you from your state of mind, would you adhere to your determination, even though you were in the minority?

A. Yes, sir.

Q. Even though, in adhering to it, you might cause impediment to yourself or to others?

A. Yes, sir.

[fol. 1647] Q. In other words, you realize your duty as a juror is one which you cannot share with anyone else?

A. Yes, sir.

Q. Outside of the jury box—

Mr. Turkus: I object. The juror indicated he would use his independent judgment.

By the Court:

Q. Counsel wants to know if you realize your duty as a juror does not go beyond the jury box, that your deliberations will be confined to members of the jury?

A. Yes, sir.

Q. And in arriving at a final conclusion you are limited to a discussion with members of the jury?

A. Yes, sir.

By Mr. Climenko:

Q. And if you entertained a doubt as to the guilt of the defendants or any one of them, you would not hesitate to reflect that doubt in your verdict of Not Guilty?

A. Yes, sir.

Q. You also understand that the defendants and each of them is presumed to be innocent?

A. Yes.

Q. You understand also the defendants are under no obligation to adduce any proof in this court?

A. Yes.

Q. That the District Attorney, who makes the accusation through indictment, is under an obligation to demonstrate guilt beyond a reasonable doubt?

A. Yes.

Q. That, whether or not the defendants or any of them produce any witnesses, that duty always remains with the District Attorney?

A. Yes, sir.

[fol. 1648] Q. And that whether or not he has sustained that duty is a problem to be decided by you without any reference to whether or not the defendants have offered any witnesses?

A. Yes, sir.

Q. So that if, in the wisdom of counsel, the defendants or any of them do not proffer any witnesses here, that is a circumstance which with you will not inure to their detriment in your mind?

A. Right.

Q. Is there any matter in your mind, any reason, any fact in your experience which creates in your mind a reservation about your ability to be a fair juror in passing upon the evidence in this case?

A. No.

(Talesman Fuller was then interrogated as to his qualifications to serve as a juror.)

By Mr. Barshay:

Q. Mr. Fuller, I did not get the name of the company with which you are affiliated.

A. The Consolidated Edison Company.

Q. You gave your occupation as engineer?

A. Yes.

Q. May I know with what concern?

A. The Consolidated Edison.

Q. Have you had any prior jury service?

A. I was called for the Grand Jury, but I never served.

Q. Did you ever serve as a Grand Juror?

A. No, sir.

Q. Were you ever the victim of any crime?

A. No, sir.

Q. Was anyone very close to you a victim of any crime?

A. No, sir.

[fol. 1649] Q. Do you know anyone in the Police Department?

A. No, sir.

Q. Is your office on 14th Street?

A. No. 380 Pearl Street, Brooklyn.

Q. Is that a branch of the New York company?

A. Yes, sir.

Q. I take it that you know that the Consolidated in Manhattan was the victim of a very large robbery?

A. Yes.

Q. Very recently?

A. A year or so ago.

Q. Maybe a little more?

A. Yes.

Q. Did you have anything to do with that?

A. No, sir.

Q. Would that fact prejudice you against anybody accused of crime?

A. No, sir.

Q. Have you ever come in contact with anyone in the District Attorney's office?

A. No, sir.

Q. Do you propose to take an interest in this forthcoming election?

A. No.

Q. Are you a member of any political club?

A. No.

Q. Are you a member of any men's club; that refers to your church.

A. I belong to a club.

Q. You have had no speakers who spoke upon the subject of crime and its prosecution?

A. No.

Q. Did you ever hear any District Attorney speaking of crime, or any other official?

A. No, sir.

Q. What club is that?

A. A club in Alabama.

Q. You are from Alabama?

A. Yes, sir.

Q. How long have you been here?

A. Twelve years.

[fol. 1650] Q. Do you belong to any club in Brooklyn or Manhattan?

A. The company's club.

Q. Sometimes they invite gentlemen to speak, don't they?

A. Yes.

Q. Have you ever had the good fortune to listen to any Assistant prepond the subject of crime?

A. No, sir, I never attended any of their meetings.

By the Court:

Q. You live about two blocks west of Flatbush Avenue?

A. One block—yes, two blocks.

Q. New York Avenue near 33rd Street?

A. Yes, sir.

Q. You are right alongside the Long Island Railroad cut?

A. Yes, sir.

Q. That is a community of private homes?

A. Yes, sir, it has four apartment houses right there.

Q. At 34th Street?

A. Yes, sir, 32nd and 31st Street.

By Mr. Barshay:

Q. Have you read the daily papers recently?

A. I get the paper in the morning.

Q. May I know which paper you prefer?

A. The evening paper, the *Telegram*.

Q. Have you read about the defendants in the paper?

A. I read a short article in the *Telegram*, after we were dismissed in the case, trying to find out why the postponement.

Q. Is that the only article you read?

A. Yes, sir.

Q. Did you find out?

[fol. 1651] Mr. Turkus: Objected to.

Q. You don't charge the defendants with that?

A. No, sir.

Q. And you will not?

A. No, sir.

Q. Have you heard any radio talks?

A. No, sir.

Q. Is it your answer you know none of the facts in this case, you know nothing against the defendants that are being tried?

A. That is right.

Q. Have you formed any opinion or impression since coming as a juror?

A. No, sir.

Q. I take it you say you are free of bias or prejudice against the defendants for any cause whatsoever?

A. I am.

Q. And the answers that some of the jurors made to certain questions propounded by either counsel have not influenced your judgment with respect to them?

A. No, sir.

Q. So you are of free and open mind?

A. Yes, sir.

Q. You know that the defendants are merely charged or accused of murder?

A. Yes, sir.

Q. You have heard the gentleman say who is next to you that he believes the Grand Jury may indict innocent men. And that is true?

A. Yes, sir.

Q. In addition to that fact, the law presumes Mr. Buchalter innocent of this crime; do you understand that?

A. Yes, sir.

Q. Are you in accord with that thought?

A. Yes, sir.

Q. That this gentleman, Mr. Buchalter, is as innocent of this crime now as any person in the court-room? Do you [fol. 1652] feel that way?

A. Yes, sir.

Q. And the substantial right given to him and which you must accord to him throughout the trial and until the twelve of you are convinced beyond a reasonable doubt that the District Attorney has sustained the burden of proof, will you accord him that right?

A. Yes, sir.

Q. When he pleaded Not Guilty to this accusation he put at issue the charge, you believe that?

A. Yes, sir.

Q. He put at issue the charge in this case which you must decide?

Mr. Turkus: That is a legal question.

By the Court:

Q. You understand that?

A. Yes, sir.

Q. That when a man says Not Guilty, then the case must be tried?

A. Yes, sir.

By Mr. Barshay:

Q. Not only did he say Not Guilty, but he denied by his plea of Not Guilty every accusation made against him, one of them being that he is an accomplice to anyone that may testify here; you understand that?

A. Yes, sir.

Q. That means that the District Attorney must present evidence to you to convince you beyond a reasonable doubt of this man's guilt?

A. Yes, sir.

Q. And you are in accord with that?

A. Yes, sir.

Q. You want to know what type of evidence he gives you [fol. 1653] from which you can draw a conclusion?

A. Yes, sir, I will have to know.

Q. You won't accept any type of evidence, but you shall accept credible and believable evidence?

A. Yes, sir.

Q. If it is not believable, you will reject it?

A. Sure.

Q. And the way to determine whether or not a person is giving you believable evidence is to find out who is that person?

A. Yes, sir.

Q. You will search for the truth as it comes from the witness stand?

A. Yes, sir.

Q. "Who is that person?" means what he has been in the past, what has been his life; isn't that so?

Mr. Turkus: I object. The jury gets instructions on the law, and they apply it to the facts.

The Court: You may reframe your question.

Q. When a person takes the stand and raises his right hand to tell the truth, you understand that does not necessarily mean he is telling the truth?

A. Yes, sir.

Q. When you are a juror, you are the one to determine whether or not he is telling the truth?

A. Yes, sir.

Q. And in order to determine whether or not a person is telling the truth, you want to know who he is?

Mr. Turkus: I object. That is not an infallible test, who he is; even a bad man may tell the truth. It is the jury's province to find out.

[fol. 1654] By the Court:

Q. If any man takes the stand and swears to tell the truth, will you consider anything and everything concerning the man which has any bearing on the question of truth?

A. Yes, sir.

Mr. Barshay: I am not putting something new to the juror. There has not been any objection for three weeks now. I think I ought to be allowed to qualify the juror as I have been allowed heretofore.

The Court: You mean the Court should shade its ruling?

Mr. Barshay: No, but the District Attorney is objecting.

The Court: I think you are getting confused because it is getting late.

By Mr. Barshay:

Q. Mr. Juror, is there anything in my questions that has created a confusion in your mind? Be fair with me.

The Court: Don't try out the Judge's remarks. I withdraw the word "confused." Maybe everybody is getting a little bit peeved because it is getting late.

Q. Assuming the witness takes the stand, a witness offered by the District Attorney, and he says, "I have been a murderer eleven times in my life; I have been a pimp, I have been a perjurer, I have been a robber, I have been an extortionist, I have been a burglar, I have been an assaulter, I have been an ex-convict," you would weigh that gentleman's testimony, if I may call him that, with a great deal of caution and care?

[fol. 1655] Mr. Turkus: I object.

The Court: Objection overruled.

A. Yes, sir.

Q. If the District Attorney offers a series of men of that character and description, you will weigh that testimony with care too?

A. Yes, sir.

Q. You will also take into consideration whether or not the same individual or group have any hope of reward for their testimony they are offering now?

A. Yes, sir.

Q. And even though they deny they have any hope of reward, if you in your own mind know they are concealing some hope of reward, you will take that into consideration?

A. Yes, sir.

Q. If you find also that the treatment they have been receiving, these gratuities I have just described, from the authorities, is of such a nature as living in hotels and taking automobile rides and going to baseball games and allowed to see their women, would you take those things into consideration before you accepted their testimony?

Mr. Turkus: That is objected to.

The Court: Objection overruled.

A. I will take everything into consideration.

Q. There may come a time when one of these men may claim he is an accomplice of the defendant Buchalter—that will be his claim—will you take that into consideration, plus the fact that he has never seen or spoken to Buchalter, [fol. 1656] in deciding whether or not he is an accomplice of Buchalter?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. There may come a time when the evidence of so-called witnesses or a witness will be offered tending to corroborate the accomplice. Will you give them the same test as you did the accomplice?

A. Yes, sir.

Q. In other words, you want to know who they are and what is the cause for their——

Mr. Turkus: (Interrupting) I object. Accomplices are not in the same category with the other witnesses.

Mr. Rosenthal: I object to the speech.

Q. You will honestly decide for yourself on all of the evidence whether or not it is true or false?

A. Yes, sir.

Q. There has been some talk about Judge O'Dwyer. You understand that Judge O'Dwyer is District Attorney of the county and as such is engaged in the prosecution of all crime?

Mr. Turkus: I object, engaged in the prosecution of all crime.

Q. I mean in charge of the investigation of all crime. You will not use the ability of Judge O'Dwyer or his reputation for integrity in deciding the guilt or innocence of these defendants?

A. I don't know anything about him.

Q. We are assuming he is, and I will vouch for it, a man [fol. 1657] of excellent reputation, but that has nothing to do with the guilt or innocence of these defendants.

Mr. Turkus: I object.

The Court: Objection sustained.

Q. In other words, that has nothing to do with their case? He may be a better prosecutor than the defense, but that has nothing to do with the case. It is these facts in the case that show up?

A. Yes, sir.

Q. That is all you will be guided by?

A. Yes, sir.

Q. The Court shall tell you that no defendant need prove his innocence. Will you follow that law?

A. Yes, sir.

Q. And if the Court tells you he need not explain any charge or any accusation or any fact or detail, will you accept that?

A. Yes, sir.

Q. If the Court should tell you that a defendant who fails to take the stand—you cannot draw any unfavorable inference against him by reason thereof, will you accept that?

A. Yes, sir.

Q. If the Court shall tell you that character is never an issue in this case or in any case unless the defendants decide to put it in issue by calling character witnesses, will you follow that?

A. Yes, sir.

Q. So that, whatever may be the opinion of anyone in the jury room with respect to anybody's character, unless it is put in issue it will be no part of this case; is that so?

A. Yes, sir.

[fol. 1658] Q. So the fact that my client is now incarcerated for a considerable period, from forty to sixty years

Mr. Turkus: You said seventy-seven before.

Q. That is right. —forty to seventy-seven years, you will not hold that against him?

A. No, sir.

Q. That has nothing to do with this case?

A. That is right.

Q. So do you feel that you are now qualified to protect the rights of the defendant Buchalter in every respect and in every degree?

Mr. Turkus: Protect or preserve? He is not required to protect—he is required to preserve.

Q. If you do that, I will feel you did protect him, so that is all right.

Mr. Turkus: What difference does it make how Mr. Barshay feels?

The Court: Objection overruled, if such it is.

Q. There will be evidence given here which may involve one defendant and exclude another. Will you use your intelligence to see that you apply it only against the defendant who is concerned?

A. Yes, sir.

Q. And even if the trial takes a long time, there are a great number of witnesses to give such testimony, in your mind you shall allocate it to the person to whom it applies?

A. Yes, sir.

Q. While they are being tried together, you understand [fol. 1659] each one is in reality being tried separately and is entitled to a separate and distinct verdict from you?

A. Yes, sir.

Q. There is no group being tried, although they are being tried together, so there is nothing in your mind either by way of element of time or any other item which would preclude you from rendering a verdict which will reflect the truth as you see it in this case?

A. No, sir.

The Court: The defendants are remanded.

Recess until seven o'clock.

(Talesmen were admonished as to their demeanor in the interim; defendants remanded.)

[fol. 1660] Evening Session—Trial Resumed

(All defendants represented by counsel.)

(The examination of talesmen in the jury box was continued.)

By Mr. Barshay:

Q. You are Mr. Gill?

A. Yes, sir.

Q. Do you know Mr. Ryan, the president of the Long-shoremens Union?

A. No, I do not personally; I have heard of him.

Q. Do you know the firm of Rice & McGuire, especially Mr. McGuire of that firm?

A. No.

Q. Do you know any of the people mentioned either by Mr. Turkus or other counsel?

A. No.

Q. Did you read about this case, Mr. Gill?

A. I did read in the early part of July two or three articles concerning District Attorney O'Dwyer, and some mention was made of crime in general, but I have not a practical recollection or thought of any mention being made about this particular case.

Q. Were the defendants mentioned?

A. I don't recall if they were or not.

Q. Have you ever read about them at all, irrespective of this case?

A. No, I do not believe I have.

Q. Have you ever heard anything about them by way of discussion with someone?

A. No.

Q. Since you received your notice did anyone speak to you about this case or the defendants?

[fol. 1661] A. We spoke about it; as a matter of fact, I did, to my superior officer, but that was in a casual way. We did not go into details about it.

Q. Casually did you express an opinion?

A. I did not.

Q. Did your superior?

A. He did not.

Q. Since being here have you formulated an opinion with respect to the defendants or the case?

A. I have not.

Q. You heard other jurors being questioned. Your opinion is still free of bias and free of prejudice and free of sentiment of any kind?

A. It is.

Q. Are you active politically?

A. No, sir.

Q. Do you intend to participate in the coming election?

A. No, sir.

Q. Did you ever hear any of the Assistants speak about crime?

A. No, sir, I have not.

Q. You do not know anyone in Judge O'Dwyer's office, do you?

A. No, sir.

Q. Do you know any police official?

A. No, sir.

Q. Have you ever been the victim of any crime?

A. No, sir.

Q. I take it you know none of the lawyers?

A. I do not.

Q. It is a little inaccurate to say that the defendants are represented by nine lawyers. Each defendant is represented by his own counsel. In other words, the nine do not represent any particular defendant, you understand?

A. I understand.

Q. You did not know Mr. Turkus or Mr. Klein when they were both practicing criminal law?

A. No, sir.

[fol. 1662] Q. You say you do not know the facts and you do not know the people and you do not know anything at all about the surrounding circumstances, do you?

A. I do not.

Q. Have you had prior jury service?

A. Yes, sir.

Q. Was it in a criminal case?

A. Mostly civil, off and on for the last twenty years.

Q. Any time criminal?

A. There was one, an extortion case. That was about seven or eight years ago.

Q. In Brooklyn?

A. In Brooklyn.

Q. Did I happen to be the prosecutor?

A. No, sir, the prosecutor was an Assistant District Attorney from Mr. Geoghan's office. He was District Attorney at the time.

Q. I was on the staff for twelve years, so that includes your seven. I do not know you; you do not know me.

A. I don't recall the prosecutor at the time.

Q. Was Mr. Turkus one of the counsel for defense?

A. No.

Q. Or Mr. Klein?

A. I don't recall. The only thing I do recall who was handling the case for the defendant was Judge Leibowitz at that time, but the case never did come to trial. There was some sort of a settlement between the defendants and the prosecution, as I recall.

Q. Was that your only service?

A. Well, as I said, off and on for twenty years I have been in accident cases.

Q. I mean in criminal cases is that your only service?

A. Yes.

[fol. 1663] Q. Of course, that will have nothing to do with this case?

A. Absolutely not.

Q. Do you believe in the law of the presumption of innocence and reasonable doubt?

A. I do.

Q. I don't have to go into the same great detail as I went with your brother jurors, do I?

A. I hope not.

Q. I will just ask you a very few questions. You heard about accomplices, and this gentleman made some answers with respect to the receipt of their testimony. Do you feel as your brother prospective juror does?

A. I do.

Q. In other words, I take it if I asked you the same questions that I asked this gentleman substantially you would make the same answer?

A. I would.

Q. And at your hands we can expect a fair and impartial verdict?

A. Yes.

Q. One that shall reflect the truth?

A. Yes.

Q. Has there anything occurred to you which would preclude you from being a juror in this case, something that I have not thought of or any other lawyer?

A. No, sir.

Q. The element of time has nothing to do with it?

A. Would not interfere with it.

Q. Can Mr. Buchalter entrust to you the preservation of his legal rights?

A. Yes, sir.

By Mr. Talley:

Q. I just have one or two questions that I would like to [fol. 1664] burden you gentlemen with. Mr. Bartholomew, what was your employment at the World's Fair?

A. I was a supervisor for the A.T.&T. building there. We used to conduct the various departments, such as the Long Distance Board. I had charge of that certain periods of the day. Then I would move over to the poultry room.

Q. That is in connection with your telephone work?

A. Yes, a telephone employee.

Q. You were a telephone employee assigned to the World's Fair?

A. That is right.

Q. I will address you three gentlemen together so as to save time, if possible. Are you all aware that the burden of proving the guilt of these defendants is always on the District Attorney, representing The People?

A. Yes, sir. Yes. Yes.

Q. And that burden never shifts from the shoulders of The People, represented by the District Attorney, to the shoulders of the defendant; do you understand that?

A. Yes. Yes. Yes.

Q. The Court will charge you that if you have a reasonable doubt—and he will define what a reasonable doubt is—it is a doubt that reasonable men might have or could have about any of the ordinary affairs of their business or social or family life—if the Court charges you that if you have, after hearing all the testimony, if you have a reasonable [fol. 1665] doubt as to the guilt of these defendants, is there any reason why you would hesitate to bring in a verdict of Not Guilty against them?

A. No, sir. No, sir.

Q. The Court will charge you that at no time during the progress of this case is the burden cast upon any of the defendants to take the stand and testify in their own behalf. That is the law. My question to you gentlemen is this: If any of these defendants do not take the stand, will you indulge in any unfavorable inference directed against them because they do not take the stand?

A. No. No, sir.

Q. I have your agreement on that? You will not say to yourselves or your fellow jurors, "Well, in view of the

testimony that has been given, as you heard, by accomplices generally, that if they are innocent they would have taken the stand and denied it"?

Mr. Turkus: I object to the preamble to the question.

The Court: Sustained for that reason.

Mr. Talley: Exception.

Q. What I wish to ascertain I think you have already answered. You will not require them to take the stand and make any explanation of anything that is said in this case if the Court charges you that the burden of proving the guilt remains on The People; is that correct?

A. That is right.

Q. In other words, it is our law that the defendant can remain silent and rely upon the requirement of the law that [fol. 1666] The People shall prove the guilt. We do not have to prove the innocence of the defendant. When I say that, I mean anybody charged with crime does not have to prove his innocence. The burden remains upon The People to prove his guilt before the jury can convict him. Will you abide by that direction of the Court, which will be given to you, and require The People to meet that burden which is placed upon them of proving the guilt of defendants before a jury can say that they are guilty of a crime? Can I rely upon you gentlemen to follow that provision of the law as defined by the Court, whether you agree with it or not? Will you follow that direction of the Court, Mr. Bartholomew, Mr. Fuller, Mr. Gill?

A. Yes.

By Mr. Rosenthal:

Q. Mr. Bartholomew, I think you said your father served on the Grand Jury?

A. That is right.

Q. How long ago?

A. My recollection, that was approximately twelve years ago.

Q. The reason why I am asking is to find out if it was of recent date.

A. No.

Q. And possibly he may have sat in this case. The last time was about twelve years ago; is that right?

A. Yes.

Q. There was another telephone man that was excused here, Mr. Pettersen. Did you know him?

A. I met him down here. That is how I know him.

Q. He was a repair man that worked for your company. [fol. 1667] While you met him down here did you exchange any views in respect to the trial?

A. We did not exchange any views except the fact of the duration.

Q. I am not interested in any views expressed as to the Telephone Company or the duration of the trial. I mean, I think you were in the box when he was questioned and told his opinion regarding a particular type of testimony, without going into it. The question which I am addressing to you is purely along whether his views as to the nature of testimony was had with you by him, or you with him?

A. No, we did not discuss that.

Q. You merely being from the same company probably discussed your duties in the company and possible length of time that you might be away. However, and this is one reason why I ask you the question, when Mr. Barshay was questioning you he asked you regarding the testimony of accomplices and the way you would view that testimony. I do not recall his asking you concerning that, Mr. Barshay being the first—Mr. Climenko was the one who addressed you?

A. That is right.

Q. I assume by now you understand as nearly as any layman can understand the meaning of the word accomplice, and do you understand further, sir, so that I can get it clear in my mind, that an accomplice can be one where the Judge tells you absolutely as a matter of law that he is an accomplice, in which event you must take the law from the [fol. 1668] Court, and in determining what weight you will give to his testimony definitely say he is an accomplice; is that clear?

A. Yes, sir.

Q. Is it also clear to you, sir, that there may be witnesses that go on the stand where there is a dispute? They may deny they are accomplices, but from the very evidence and the nature of their evidence it appears that there is a question as to their complicity. In that event the Judge will say to you it is up to you, the juryman, to determine as a

question of fact whether this man is an accomplice or not. Is that clear?

A. Yes, sir.

Q. In that event, merely because of the fact that the Judge leaves it to you and does not tell you as a matter of law that he is an accomplice, would that in any wise sway you from determining for yourself the question of his complicity in the crime?

A. No.

Q. If you once determined that he was an accomplice,—and, Mr. Fuller and Mr. Gill, I notice that you are listening, but I do not intend to repeat the question,—if there is any question in your mind as to whether you would answer it the same way, why just reserve it mentally and when I come to you tell me what fault you may find. Once you determine he is an accomplice, then, of course, you will apply the same rules of law that the Judge lays down for the accomplice which he has charged as an accomplice, is that true?

A. Yes, sir.

Q. There was some misunderstanding, and I want to get [fol. 1669] straight on the subject as to whether you understood Mr. Climenko's question or not respecting the force or effect that you would give to anybody's testimony who has previously been convicted of crime and who possibly may have a motive in going on the stand and testifying to certain alleged facts concerning these defendants. Now will you, sir, in determining what weight you will give to anyone's testimony, whether he be the accomplice or one who says he is not an accomplice, in weighing what value you will give to the testimony, take into consideration all of the surrounding facts and circumstances as to that particular witness? For instance, if perchance, he has committed murder and never been punished, if, perchance, he has been in a court of jurisdiction of this character and sworn he would tell the truth to the jury in a similar situation, and it has been ascertained that he told an absolute falsehood, if, perchance he has been given immunity, which means that he is not to be punished because he has been permitted to testify before a Grand Jury without waiving immunity for the particular crime which he admits he committed, and if a number of other things, his actions, his demeanor, his refusal to answer questions, his hesitation, the manner in which he answers, all of those things, will you

take those things into consideration in determining what weight, if any, you would give to that man's testimony?

A. That is the same question I answered before.

[fol. 1670] Q. There was some misunderstanding. You answered it in the negative before, and then the Judge asked you a question, so I want to clarify my own mind as to whether or not your state of mind is such that you will scrutinize with care and caution and suspicion the testimony of any individual who may have a motive for telling an untruth.

A. Yes.

Q. You answered Mr. Barshay "No," and I assumed that you had misconstrued the meaning of his question to you, but I wanted to clarify in my own mind whether you did or whether you meant the answer which you gave.

You can readily understand, sir, and the Court will charge you, not only in this case but in any case that in so far as the testimony of an accomplice is concerned, it not only must be scrutinized with care and caution, but must be scrutinized with suspicion.

Mr. Turkus: I object to it. The juror says he will take all those things into consideration. This is sheer repetition.

The Court: What is the question?

Mr. Rosenthal: I have not finished the question. I am waiting until Mr. Turkus gets finished to finish the question.

Q. And if that is done by the Judge in this particular case, you understand, sir, that that is not the law of this case, don't you, that it is our general law of the land?

A. Yes, sir.

Q. And in so far as any person is concerned, whether he [fol. 1671] be an accomplice or not, do you understand that where the testimony shows that he has something to gain or a motive for testifying in a certain way, that that person's testimony should be scrutinized with care and caution?

A. Yes, sir.

Q. If it develops in this case that there are one or more persons in that category, you will do that, won't you?

A. Yes.

Q. You have heard also the question of independent evidence tending to connect the defendant with the crime. You

heard that discussed before you got into the witness box and probably while you were in the box, haven't you?

A. Yes.

Q. That independent evidence which the District Attorney has at the present time is unknown to us and will be disclosed when the case starts, and so you understand some of these questions that we ask may never occur within the case? You understand that, don't you?

A. Yes.

Q. We must ask questions under the assumption, you understand, that possibly that is the case here. Do you understand that?

A. Yes, sir.

Q. Now then, assuming that in this particular case the independent evidence is supposed to consist of something that my client is alleged to have said to some one of the witnesses for The People. Assume that. And assume that that particular individual had every motive for testifying on the stand, including the various things which I mentioned before, such as murders that he committed and [fol. 1672] things of that character, in weighing what weight you will give to that alleged oral statement supposedly made to him, will you take all the facts and circumstances in consideration before you accept it as true?

A. Yes, sir.

Q. If a doubt arises in your mind—I put the word “reasonable doubt”—that a person of that character was telling the truth, do you understand that that reasonable doubt must be resolved in favor of the defendant? Do you understand that?

A. Yes, sir.

Q. In so far as the defendant represented by myself is concerned, it may be possible that after the conclusion of the People's case, if the Court decides as a matter of law that there is sufficient to warrant the case going to your hands, that we then will offer evidence. The mere fact that we do come forward and offer evidence does not imply in your mind that the burden shifts over to us to prove we are innocent; does it?

A. No, sir.

Q. You understand that if the evidence which we offer, whether it be so-called alibi evidence, is enough to raise in your mind a doubt as to the guilt of the defendant, based

upon the fact that here is such testimony, and that doubt is founded on reason, that that doubt, like any other doubt, must be resolved in favor of that defendant and he must be acquitted. Do you understand that?

A. Yes.

Q. And you will follow that instruction. Now, one of the [fol. 1673] attorneys here has discussed, in so far as his client is concerned, he is serving a term, a long term, in prison. The mere fact that that has been disclosed to you by counsel for one of the defendants is not going to in any wise prejudice any one of you against the defendant represented by me?

A. No, sir.

Q. The fact is that you understand that as far as the defendant represented by myself is concerned, it is my duty merely to establish to you his innocence, and I have no part as to the other two defendants, even though they are on trial with us. Is that clear to all? We are entitled to a separate trial at your hands and to be judged upon the evidence in so far as it affects us and us only; is that clear?

A. Yes.

Q. Now then, the mere fact that a defendant takes the stand, would you, because of the fact that he is indicted, feel that, being a defendant and necessarily having an interest in the matter as any defendant would have, to resist conviction, that that fact alone would brand his testimony as a falsehood—the fact that he is a defendant? Is that your state of mind, either one of you?

A. No.

Q. Is that your state of mind?

A. No, sir.

Q. Let me make it clear to you, Mr. Gill: I said the mere fact that the man is a defendant, if he takes the stand, would the fact that he is a defendant convey to your mind that he is necessarily telling a falsehood when he swears to tell [fol. 1674] the truth?

A. No, sir.

Q. You understand further that the truth from the defendant is just as valuable as the truth from any source? That is natural, because truth is truth; isn't that right?

A. Yes.

Q. So that if you once believe the defendant's story, and that story raised a doubt in your mind as to his guilt, a

reasonable doubt, would you resolve that doubt in his favor and give him the benefit of it and acquit him?

A. Yes.

Q. You have been asked by Mr. Turkus, the words that he used, I think are fear and reluctance—I do not know what other word he uses——

Mr. Turkus: Hesitation.

Q. Would you have any fear or hesitation or reluctance in coming in——

Mr. Turkus: No more reluctance.

Q. Would you have any fear or hesitation in coming in with a verdict of Not Guilty if you were not convinced beyond a reasonable doubt as to the guilt of these defendants?

A. No.

Q. I think you said, Mr. Bartholomew, that you had not read practically anything concerning this case. Am I right on that?

A. That is right.

Q. So that necessarily you formed no opinion as to the guilt or innocence of the defendant; is that right?

A. Yes.

Q. I think you, Mr. Fuller, said that you read the *Tribune* and the *World-Telegram*.

A. Right.

[fol. 1675] Q. Did you also say that you were called for service on the Grand Jury?

A. Yes.

Q. How long ago was that?

A. Last year.

Q. About a year?

A. Yes.

Q. In the County Court in Brooklyn?

A. Civil case.

Q. That would not be the Grand Jury.

A. It was not Grand Jury, then; it was an accident case.

Q. You mentioned to Mr. Barshay Grand Jury, and then that you never served. The Grand Jury is the one that would sit on criminal cases and find indictments. You were in error as to that?

A. Yes.

Q. You mean some civil case?

A. Yes.

Q. I think you said you read some articles in the *World-Telegram* and the *Tribune*.

A. I read one article.

Q. That article in the *World-Telegram*, was it since you were called for jury service?

A. Yes, it was after the postponement.

Q. I recall now you told us you were inquisitive to ascertain the reason for the adjournment; is that right?

A. That is right.

Q. And the paper explained the cause of the adjournment. That, of course, has no effect upon you as the trial progresses here that would in any wise incapacitate you from being fair and impartial?

A. (No answer.)

Q. Mr. Gill, you mentioned to Mr. Turkus that you had a [fol. 1676] great deal to do along the waterfront in Brooklyn. I do not know whether the waterfront has anything to do with this matter. All I know is that every jurymen that got in this box was asked by Mr. Turkus whether he had any connections along the waterfront.

Mr. Turkus: Objected to.

Mr. Rosenthal: I submit—

Mr. Turkus: Please.

Mr. Rosenthal: Wait until I finish the question, please, before you make an objection.

The Court: Finish the question.

Q. Now, that being the case—

Mr. Turkus: Will you refrain from answering until the Court rules?

Q. That being the case, sir, I want to know whether or not, if it does develop in this case that there is something about the waterfront, your connections or associations are such along the waterfront that you would in no wise be embarrassed or prejudiced or biased against either The People or the defendant. It does not make any difference, does it? That is the question. Now you may object.

Mr. Turkus: There is a preamble to the question, your Honor.

Mr. Rosenthal: I submit the preamble is proper in view of the fact that that is the only reason why I can ask any [fol. 1677] question concerning it. It is brought out by the

District Attorney. He asked every man about the waterfront, did he cover the waterfront, or something like that.

Mr. Turkus: I ask your Honor to have that remark stricken from the record, "Did he cover the waterfront?" There is no such discussion with any juror.

The Court: The gentleman said that he was employed by the Savannah Line.

Mr. Rosenthal: That is right.

The Court: And in the course of his business he dealt with certain people located along the waterfront.

Mr. Rosenthal: That is right.

By the Court:

Q. Anything to do with stevedores, the labor unions at all—no contacts whatever?

A. No, sir.

Q. Then I take it there is nothing in the waterfront business that has any relation to this case?

A. None at all.

Q. Or affects you in any way?

A. No, sir.

By Mr. Rosenthal:

Q. The question which I am asking you, sir—and wait until there is an objection, if there is one—is that Mr. Turkus has mentioned waterfront—what connection, if any, it has to do with this case I do not know. You have mentioned waterfront and your connections with it. If something should develop in this case that involves the waterfront [fol. 1678] front, would your connection with the waterfront be such that you may be either embarrassed one way or the other or biased as to either side?

Mr. Turkus: I object to it. It is sheer speculation.

The Court: Sustained.

Mr. Rosenthal: I respectfully except, sir. No further questions.

Q. You have no relatives in the Police Department, have you?

A. I have not.

Q. There is another gentleman on the panel—I think his name is—he is James F. and you are Henry T. You are no relation to him?

A. No.

Mr. Rosenthal: No challenge for cause.

Mr. Barshay: None for cause.

Mr. Turkus: May we make the pronouncements with respect to jurors one by one? The first juror, Mr. Bartholomew, is satisfactory to The People of the State.

Mr. Barshay: I thought your Honor would require both the District Attorney and counsel to act with respect——

The Court: I am just puzzled as to the reason for that. I think it is best to announce all three.

Mr. Turkus: All right. Mr. Fuller is satisfactory to The People and Mr. Gill is satisfactory to The People of the State.

Mr. Talley: If your Honor pleases, the juror Henry T. [fol. 1679] Gill is satisfactory to defendants. Peremptory challenge as to Mr. Bartholomew and Mr. Fuller.

(Henry T. Gill takes Seat No. 5 in the jury box.)

The Court: Call seven more.

(The following talesmen were called and took their places in the jury box: Jacob A. Fortunoff, Granada Hotel; Robert F. Smith, 143 East 31st Street; James B. Cummings, 1045 East 31st Street; Ianar A. Gritting, 1411 West 7th Street; Lawrence A. Sifert, 1060 Carroll Street; George E. Carlson, 550 Seventy-fourth Street; Herman F. Bell, 1821 Glenwood Road, Brooklyn, New York.)

The Court: The other gentlemen may go until tomorrow morning at ten o'clock.

By Mr. Turkus:

Q. Mr. Fortunoff, is that the pronunciation of the name?

A. That is right.

Q. In impaneling the jury under the system we now have, the idea is to expedite the selection of the jury, and so some questions that pertain to all the prospective jurymen are asked of one juror so that all of the other jurymen may hear it; so that you will understand that although I speak to you in such close proximity, I raise my voice so that all the other jurors can hear the questions.

According to the address you have listed, you reside at the Granada Hotel; is that correct?

A. That is right.

[fol. 1680] Q. How long have you lived there, Mr. Fortunoff?

A. About two years.

Q. Prior to that time where did you reside?

A. St. Marks Avenue.

Q. What section of Brooklyn is that?

A. St. Marks and New York.

Q. Bedford section. Did you live there for a number of years in the Bedford section?

A. Yes.

Q. More than five?

A. Yes.

Q. Prior to that time did you live in some other section of Brooklyn?

A. Yes.

Q. What district was that? Would that be on the side of the park?

A. Montgomery and Albany.

Q. Is that Crown Heights?

A. That is right.

Q. Your vocation or business is listed as cotton goods: is that correct? Do you manufacture the product?

A. Manufacture.

Q. Are you the proprietor of the place?

A. That is right.

Q. 443 Broadway is near what cross street?

A. Near Grand Street.

Q. That is one block from Canal?

A. That is right.

Q. How far is that from 5th Avenue and Grand? It does not go through?

A. Ten blocks.

Q. That is the district that is commonly known as the cotton goods district, isn't it?

A. That is right.

Q. Do you manufacture linings for clothes?

A. No.

[fol. 1681] Q. Do you have any connection of any kind, nature, or description in the garment district?

A. To a certain extent.

Q. Does that extent go to the point where you sell merchandise in the garment district?

A. Yes.

Q. You have accounts that you deal with in that area?

A. That is right.

Q. Are those persons manufacturers of clothes?

A. Yes.

Q. And does business bring you in frequent contact with these people?

A. Yes.

Q. In other words, you have access, then, to the garment district in the clothing center in Manhattan by way of business?

A. That is right.

Q. How many years have you been having that contact?

A. About twenty-five.

Q. Is that a substantial portion of your business?

A. Yes.

Q. In going into the garment district, have you heard people discuss the Dewey investigation?

A. Yes.

Q. In the discussions that you have heard have you heard mentioned the names of Lepke and Gurrah?

A. Yes.

Q. Have you heard mention of the O'Dwyer investigations?

A. Yes.

Q. And have those points of information that you secured been from people in the garment and clothing district?

A. Not exactly.

Q. People familiar with conditions there?

A. Yes.

[fol. 1682] Q. Have the things that you have heard caused an impression to form in your mind?

A. No.

Q. In anything that you have heard, have you formed an impression about the name Lepke?

A. No.

Q. Or about the name Gurrah?

A. No.

Q. Am I correct in understanding that you have been in that area now for twenty-five years?

A. That is right.

Q. Have you read anything in the newspapers with regard to the Dewey investigation?

A. Yes.

Q. Have you read anything in the newspapers with regard to the O'Dwyer investigation?

A. Yes.

Q. By virtue of your contact there on business, which is a substantial part of your business, have you read any of those articles with any degree of interest?

A. No.

Q. Is there anything impressed on your mind as the result of reading articles in the press?

A. No.

Q. Is the name of Hyman (Curley) Holtz a familiar name to you?

A. No.

Q. Do you know officials associated or connected with the Amalgamated Clothing Workers of America?

A. No.

Q. Through business or in any other way did you have any connection in clothing trucking?

A. No.

Q. People engaged in the clothing trucking business?

A. No.

Q. Or any of the officials of a clothing trucking union?

A. No.

[fol. 1683] Q. Are you married, Mr. Fortunoff?

A. Yes.

Q. And I take it you reside with your wife and family?

A. Yes.

Q. Do you now or did you ever have any connection with any official at all of the Amalgamated Clothing Workers of America, Local 240, of the Clothing Helpers & Drivers Union or any other union which does business in the garment and clothing districts in Manhattan?

A. No.

Q. Do you have your products trucked out by trucking?

A. Some of them.

Q. Do you have any contact with trucking unions as the result of the trucking that you have done?

A. No.

Q. Do you operate your own trucks or do you hire trucks?

A. We have an individual truckman who owns his own truck.

Q. How many manufacturers do you deal with in the clothing district?

A. Quite a few.

Q. I believe you said it was a substantial part of your business.

A. That's right.

Q. Is that business dependent upon the good will of these people engaged in the clothing business?

Mr. Climenko: I object to the question, if your Honor please.

The Court: Overruled.

Mr. Climenko: I except.

Q. Does it depend upon the good will of people who maintain businesses in that district?

A. No.

Q. Do I understand you correctly that you supply merchandise to people engaged in that area in the manufacture of garments?

Mr. Climenko: I object to that as repetitions.

The Court: Overruled.

Mr. Climenko: Exception.

Q. Is that business that you have there with the people engaged in the ladies' garments, is that dependent upon the good will of those manufacturers?

A. Which manufacturers?

Q. The people that buy the stuff from you.

A. The people who buy from me, bears upon their good will.

Q. Do you know any members of the International Ladies Garment Union?

A. No.

Q. Should the name of some person engaged in the manufacture of ladies' garments enter into the testimony in the case, would you be embarrassed in jury service?

Mr. Climenko: I object to that question as entirely too hypothetical.

The Court: Overruled.

Mr. Climenko: Exception.

A. I don't imagine.

Q. If that person were a customer would you be embarrassed?

A. No.

Q. In connection with the names of Lepke and Gurrah, [fol. 1685] have you had any conversations with anybody in the ladies' garment industry?

A. No.

Q. Did you hear any talks about the names of Lepke and Gurrah while you were there in that business?

A. No.

Q. Is the only knowledge that you have of those names limited to newspaper reading?

A. That is all.

Q. Have you had any past business connection or any other contact of any kind, nature or description with persons in the Brownsville-East New York section of Brooklyn?

A. No.

Q. The Brooklyn waterfront?

A. No.

Q. Mr. Fortunoff, is your business taking cotton and manufacturing it into cloth?

A. Taking cloth and working it into manufacture for ladies' garments.

Q. So your entire product is sold to people manufacturing ladies' garments?

A. That is right.

Q. Is there any familiarity in your mind with the name of Murray Weinstein, manager of Clothing Cutters Local No. 4, a Cutters Union affiliated with the Amalgamated Clothing Workers of America?

A. No.

Q. Is the name of Samuel Katz as an official of the Clothing Cutters Union a familiar name to you?

A. No.

Q. Did you at any time in your twenty-five years of experience in connection with those industries, hear the name of Bruno Belia, an organizer of the Amalgamated?

A. No.

Q. Or that of Salvatore Marazzano?

A. No.

[fol. 1686] Q. Or the name of Abe or Abraham Beckerman?

A. No.

Q. Or that of Philip Orlofsky, one-time manager of the Cutters Local Union 4?

A. No.

Q. Is there any familiarity to the name of Mendel Yudelowitz or that of Max Silverman or Wolfie Goldis?

A. No.

Q. Do you have any friends who reside in Sea Gate section of Brooklyn?

A. No.

Q. Is there any familiarity in your mind with the name of William or Willis Alberts, a one-time bondsman?

A. No.

Q. Or that of Emanuel Buchalter?

A. No.

Q. Phillie Kowas, a dentist?

A. Yes.

Q. You know him? You know him socially?

A. Yes.

Q. You visited at his home?

A. No.

Q. He visits your home?

A. We visited at a friend's.

Q. When is the last time you saw him?

A. A couple of months ago.

Q. Since you received your jury notice have you had any discussions with anybody about this case?

A. No, sir.

(Jacob A. Fortunoff challenged for cause by Mr. Turkus.)

The Court: Try the challenge.

JACOB A. FORTUNOFF, No. 2767, residing at the Granada Hotel, Brooklyn, New York, was duly sworn.

By Mr. Turkus:

Q. While seated in No. 6 in the jury box, I asked you certain questions and you made responses?

A. Yes, sir.

Q. If I were to repeat those questions to you now, when you are under oath, would you make the same responses?

Yes, sir.

[fol. 1687] Q. Would they be true?

A. Yes, sir.

The Court: The Court does not know what they were, because the witness was speaking in a very low tone while in the jury box. His voice is barely audible here.

Q. Now, this is in substance what you told me, didn't you: that for the past twenty-five years you have been engaged in the manufacture of goods?

A. Yes, sir.

Q. And that the entire output of your factory has been sold in the garment district?

The Court: I understood it was a challenge for implied bias on account of intimacy with one of the defendants' brothers. Why not come down to that?

Q. Do you know Buchalter's brother?

A. Yes, sir.

Q. Do you visit his house?

A. No, sir.

Q. You visit at a mutual friend's house?

A. Yes, sir.

Q. And play cards?

A. Yes, sir.

Q. Together?

A. Yes, sir.

Q. How long has that been going on?

A. Several years.

Q. Do you eat and drink together?

A. Yes, sir.

Q. Has that been going on for several years?

A. Yes, sir.

Q. I take it he is one of your intimate personal friends.

A. Yes, sir.

The Court: Is there anything else?

By Mr. Barshay:

Q. Do you also know Mr. William Siegel, an Assistant [fol. 1688] District Attorney?

A. Yes.

Q. He is also an intimate friend of yours?

A. Yes, sir.

Q. You visit at his house?

A. Yes, sir.

Q. And he visits yours?

A. Yes, sir.

Q. And that would cause you embarrassment in this case?

A. Yes, sir.

Defense Counsel: No questions.

The Court: Challenge sustained.

ROBERT F. SMITH, residing at 143 East 31st Street, Brooklyn, New York, (No. 2734), was then interrogated as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Mr. Smith, you reside in East 31st Street?

A. Yes, sir.

Q. Have you lived in Brooklyn for a number of years?

A. Yes, sir.

Q. Would you say for more than five?

A. Yes, sir.

Q. Has that residence been in the Flatbush district in Brooklyn?

A. Yes, sir.

Q. On this card on which we have the name of the juror, your vocation is listed as a safety engineer; is that correct?

A. Yes, sir.

Q. Are you employed by some firm or corporation?

A. Yes, sir.

Q. What is the name of it?

[fol. 1689] A. Mutual Casualty Company of Illinois.

Q. Have you been employed by that concern for a number of years?

A. Yes, sir.

Q. Is the work of safety engineer a technical job?

A. Yes, sir.

Q. Are you required to have a specialized knowledge of mechanics?

A. Yes, sir, to have a degree.

Q. In other words, you have had college training?

A. Yes, sir.

Q. And you received your degree?

A. Yes, sir.

Q. These questions may not apply to you, but I will just use you as through whom the rest of the jurors may get the rest of the questions. I am interested in knowing whether or not, by way of any connection whatsoever, social or

business, you come in contact with anybody in the garment or clothing district or industries in Manhattan.

A. I did, but not for the last four or five years, but previous to that I did; as an inspector for insurance companies, I contacted various manufacturers.

Q. Would that be an inspection of their equipment?

A. Liability insurance.

Q. As a result of any business dealings you have had, did you make any social contacts?

A. Not particularly, no, sir.

Q. Was that the limit of your connection with the people in those industries?

A. That was all.

Q. By way of business did you have any connection with [fol. 1690] anybody in the Brownsville or East New York sections?

A. Yes, sir.

Q. Was it along the same lines, an inspection of equipment?

A. Yes, sir.

Q. Did you have any other contact with people in that area other than that?

A. My work at the present time is on the waterfront; I am an engineer for the insurance company, inspecting stevedoring and looking after goods for insurance, to see that the material is handled properly.

Q. Is the name of Albert Anastasio familiar to you?

A. No, sir.

Q. Or the name of Peter Pinto?

A. No, sir.

Q. So that your work in the particular district in the City of New York has been that of inspecting equipment, as you pointed out?

A. Yes, sir.

Q. I take it you are familiar with the charge in this case, that it is a murder case?

A. Yes.

Q. And that these defendants, Buchalter, Weiss and Capone, are charged with the crime of murder in the first degree?

A. Yes, sir.

Q. Is there anything about the nature of the charge, namely, a charge of murder in the first degree, which would impair your serving as a jurymen in this case?

A. Why yes, I am not one hundred per cent for capital punishment.

Q. Did you qualify as a special juror?

A. I did.

Q. Have you had a change of feelings?

A. Yes, sir.

Q. Has that change come about since you qualified as a [fol. 1691] special juror?

A. That is right.

Q. When you were before the Commissioner of Jurors and qualified, did you make answer that you were against capital punishment?

A. When I qualified I answered I was not against capital punishment. Since that time I read stories, and it changed my opinion.

Q. Have you such a feeling in relation to capital punishment or against capital punishment that it would prevent you finding a defendant guilty, even if the evidence should prove guilt beyond a reasonable doubt.

A. I would be reluctant in making any decision for the electric chair.

Mr. Turkus: I challenge for cause.

The Court: Try the challenge.

ROBERT F. SMITH, No. 2734, residing at 143 East 31st Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Turkus:

Q. If I were to ask you the same questions I asked you while you were occupying Chair No. 7 in the jury box, would you make the same responses?

A. Yes, sir.

Q. Would they be truthful answers?

A. Yes, sir.

Q. And do they truthfully reflect your state of mind?

A. Yes, sir.

(No questions from defense counsel.)

The Court: Challenge sustained.

[fol. 1692] JAMES B. CUMMINGS, of 1045 East 31st Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Are you in the insurance business as an adjuster?

A. Yes, sir.

Q. By what company are you employed?

A. The General Accident, Fire & Life Insurance Corporation.

Q. That is quite an impressive title?

A. Yes, sir.

Q. Does your work bring you in contact with lawyers from day to day?

A. Only in Nassau and Suffolk Counties.

Q. Is that the territory to which you are assigned?

A. Yes, sir.

Q. That is part of your business, the adjustment of claims?

A. Yes, sir.

Q. In that capacity you represent the insurance company?

A. Yes, sir.

Q. And lawyers represent the claimants or the ones who have been injured or alleged to have been injured?

A. Yes, sir.

Q. You and the lawyer, if you can, make a settlement, and that closes the case, and if you cannot, there is a lawsuit?

A. Yes, sir.

Q. Is 1045 East 31st Street the correct address?

A. Yes, sir.

Q. Is that what is known as the Flatbush Section?

A. Yes, sir.

The Court:

Q. Is that near Avenue L?

A. Between J and K.

[fol. 1693] Q. Is the office of the General Accident Company on William Street?

A. They were until six months ago, when we moved to 99 John Street.

Q. The defendants at the bar, Buchalter, Weiss, and Capone, are charged with the crime of murder in the first degree. Is there anything about the nature of the charge which would prevent you from doing justice in this case?

A. No, sir.

Q. May I go along with the understanding that you have no conscientious or other scruples against capital punishment?

A. Yes, sir.

Q. And that in deliberating the question of guilt or innocence, in so far as you are concerned, the question of punishment will not enter into your mind?

A. Yes, sir.

Q. These defendants at the bar are represented by nine lawyers. They have a right to be represented by as many lawyers as they wish. They are divided up into pairs of three—I will mention the names to you, so that the other jurors may hear them and see if there is any acquaintance-ship with any counsel. The defendant Buchalter is represented by former Assistant District Attorney Hyman Barshay, former Assistant United States Attorney Bertram Wegman, and Mr. Jesse Climenko, who is a partner of Mr. Wegman; do you know any of those three?

A. No, sir.

Q. Or do you know anyone connected with their offices?

A. No, sir.

[fol. 1694] Q. In respect to the defendant Weiss, he is represented by former General Sessions Judge Talley, former Assistant District Attorney Cuff, and former Assistant United States Attorney Murray Kriendler. Do you know any of those three?

A. No, sir.

Q. Did you at any time come in contact with Mr. Cuff? I believe he represents or did represent some insurance company at that time.

A. I heard his name, but I never came in contact with him.

Q. With respect to the defendant Capone, he is represented by Sidney Rosenthal, Mr. Fischbein, and Mr. Rosenberg. Do you know any of those?

A. No, sir.

Q. Do you know anyone connected with their law offices?

A. No, sir.

Q. Did you maintain intimate acquaintanceship with any lawyer who practices the defense of criminal cases as a specialty?

A. No, sir.

Q. May I understand you are in sympathy with law enforcement?

A. Yes, sir.

Q. Since your name appeared on the jury panel, and more specifically since you got your notice as a prospective juror, did anybody speak to you about the case?

A. No, sir.

Q. Do you know the district attorney of the county, Judge O'Dwyer, personally, or do you know personally any member of his staff?

A. No, sir.

[fol. 1695] Q. In this case there is a question of accomplice testimony as being part of the case. Have you heard any discussion from where you were, with the other talesmen about accomplice testimony?

A. No, sir.

Q. Do you understand an accomplice is one who was a perpetrator or co-participant in the commission of a crime, with others?

A. Yes, sir.

Q. Do you find any fault with the prosecutor of the county in solving a case, a murder case, by accepting the testimony of one of the perpetrators of the crime and using that against the others?

A. No, sir.

Q. Do you find any fault or do you have any prejudice against the prosecution which employs the use of co-participant testimony?

A. No, sir.

Q. There will be many questions put to you with reference to things to be considered when you weigh the believability of accomplices. Do you follow me?

A. Yes, sir.

Q. If it appears that an accomplice has had a life of crime and associated with criminals, and there are other factors in derogation of him, will you consider all those things when you weigh his believability?

A. Yes, sir.

Q. Will you consider every evidence of every immoral act that may be attributed to him?

A. Yes, sir.

Q. Will you, nevertheless, if accepted as a juror, use your mental faculties to find out is this accomplice telling the [fol. 1696] truth about the group of defendants with him, whom he says committed this crime with him? Will you do that?

A. Yes, sir.

Q. Even an insurance adjuster who goes around on claims and sees lawyers may sometimes not come in contact with some of the kind of people you will hear in this case, if you are accepted. But will you at all times use your mental faculties and use your common sense and understanding in applying it to the facts in this case?

A. Yes, sir.

Q. Will you find out, from all of the tests you can conjure up, what is sensible and fair, to apply to the accomplice who speaks of his complicity with others in this group of defendants on trial—is he telling the truth—will you do that?

A. Yes, sir.

Q. Will you accept the instructions of law from the Judge?

A. Yes, sir.

Q. You understand that there can be no conviction upon the uncorroborated or unsupported testimony of an accomplice?

A. Yes, sir.

Q. Will you conscientiously endeavor to apply that to the facts in this case?

A. Yes, sir.

Q. Should the Judge charge you that corroboration need not be as to every single item testified to by an accomplice, will you follow that instruction of law?

A. Yes, sir.

Q. And if the Court should charge you that the jury may find corroboration insufficient upon credible proof, which [fol. 1697] tends to connect the defendants and each of them

with the commission of the crime, will you follow that instruction of law?

A. Yes.

Q. And will you endeavor conscientiously to apply it to the facts in this case?

A. Yes, sir.

Q. Will you, if selected in this case, endeavor to adjust your mental faculties to center upon the point to see whether or not the accomplice speaks the truth when he tells of a combination of these defendants and himself who perpetrated this crime?

A. Yes, sir.

Q. And the part that each one played in it?

A. Yes, sir.

Q. Bearing in mind that there can be no conviction upon the unsupported testimony of an accomplice, will you use your own judgment in finding out who is an accomplice in the case?

A. Yes, sir.

Q. Would you, merely because the three defense lawyers agree with themselves and with each other that everybody is an accomplice, will you substitute their opinion for your own?

Mr. Barshay: I object. It is assuming something that cannot be true.

The Court: Objection sustained.

Q. Will you use your understanding in finding out the part that each person played in the perpetration of this crime?

A. Yes, sir.

Mr. Rosenthal: Do what?

[fol. 1698] The Court: "What part, if any." Reframe your question.

Q. "If any," in the perpetration of this murder?

A. Yes.

Q. In the event—I do not say it will happen—but in the event that the three lawyers should sum up—and they have a right to sum up for their clients—if they should all urge a similar or the same argument with respect to pieces of evidence, will you, because you hear it three times, be inclined to give it three times the force and effect?

A. No, sir.

Q. In other words, you will use common sense and understanding in weighing the one issue in the case, the guilt or innocence of these defendants on trial?

A. Yes, sir.

Q. Now, with respect to the other jurors who have been selected and the others who have been questioned, one of the lawyers for the defendant Buchalter pointed out that in the past Buchalter was convicted of crimes he had committed and is now serving a jail sentence for the commission of this offense.

A. Yes, sir.

Q. Bearing in mind that this man is presently in jail, would you relax your duty as a juror in this murder case solely because he has been convicted of other offenses?

A. No, sir.

Q. Would you deviate from a proper result?

A. No, sir.

Q. With respect to the allocation of evidence in the case, will you, if the evidence obviously pertains only to a single defendant, apply that evidence to the defendant against whom it was given?

A. Yes, sir.

[fol. 1699] Q. Where the evidence obviously applies to two or three of the defendants, will you apply that evidence as to those against whom it applies?

A. Yes, sir.

Q. I believe I went through the questions of the Brownsville and East New York sections and the Brooklyn waterfront and the garment and clothing contacts with you?

A. You did not, but I have none.

Q. You heard of the industries I mentioned and some of the names, I take it, of the union officials that I have mentioned; is there any familiarity with any of those names I mentioned to you?

A. No, sir.

Q. You have no contact with any of the industries in any of the districts I enumerated?

A. No, sir.

Q. Are you ready, if selected as a juror, to take your seat in this jury and do justice by the verdict you would render in the case?

A. Yes, sir.

Q. And if selected, will you talk the case over with common sense and understanding with the other jurors?

A. Yes, sir.

Q. After you have heard all the evidence in the case, every argument the defense lawyers give you as to the inferences they draw from the testimony, and you hear the prosecutor tell you the inference he draws, and the Judge tells you the law, and your mind is satisfied beyond a reasonable doubt that Buchalter is guilty of murder in the first degree, and that Weiss is guilty of murder in the first degree, and that [fol. 1700] Capone is guilty of murder in the first degree, will you hesitate to say so in your verdict?

A. No, sir.

Q. Will you have any fear in so saying?

A. No, sir.

EINAR A. GRYTTE, of 1411 West 7th Street, Brooklyn, New York, was interrogated as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Is West 7th Street where you live?

A. Yes, sir.

Q. Your name is listed as that of builder.

A. Yes, sir.

Q. Have you lived in the Flatbush district for a number of years?

A. That is Bensonhurst.

Q. Have you lived in the Bensonhurst district for a number of years?

A. Yes, sir.

Q. How long have you been a builder?

A. Twenty years.

Q. Are you in business for yourself?

A. Yes.

The Court:

Q. Is that West 7th Street and 14th Avenue?

A. West 7th Street and Avenue O.

Q. Did you hear me mention the districts of East New York and Brownsville and the Brooklyn waterfront?

A. I have.

Q. And the garment center in Manhattan?

A. I did.

Q. Do you have any contacts there?

A. No, sir.

Q. Did you ever have any contacts in any of those particular localities with any persons in the industries I mentioned?

A. No, sir.

[fol. 1701] Q. Are you presently building anything under construction?

A. No.

Q. Have you done any building at all in the Brownsville or East New York area?

A. No, sir.

Q. I mentioned to Mr. Cummings and to Mr. Smith, who are alongside of you, about contacts with union officials connected with the Amalgamated Clothing Workers of America. Are any of the names of those Union officials familiar to you?

A. No, sir.

Q. Have you had any contact with any officials of the Amalgamated Union?

A. No, sir.

Q. Or with the Clothing Truckers & Drivers Union?

A. No, sir.

Q. Do you have any present dealings with any building trades unions?

A. No, sir.

By the Court:

Q. Is that the Kings Highway section where you are?

A. Yes, sir.

Q. Near the Culver Line?

A. Sea Beach.

Q. You are building there now?

A. No, sir, I was not for ten years.

Q. You still have an office there?

A. No, sir, only my home.

By Mr. Turkus:

Q. Are you in sympathy with the enforcement of the Penal Law?

A. Yes, sir.

[fol. 1702] Q. Since your name appeared on the jury panel and particularly since you received a notice as a prospective juror, did anybody speak to you about the case?

A. No, sir.

Q. Do you know any of the nine lawyers whose names I mentioned?

A. No, sir.

Q. Or anyone attached to their law offices?

A. No, sir.

Q. Do you know any lawyer who practices criminal law as a specialty?

A. No, sir.

Q. Do you know the District Attorney of the County, Judge O'Dwyer, or any Assistant District Attorney on his staff?

A. No, sir.

Q. Did you hear the view expressed by Mr. Cummings as to accomplice testimony?

A. Yes, sir.

Q. Are you familiar with the testimony of accomplices, and what an accomplice is and what it means?

A. I understand what it means.

Q. Do you find any fault with the prosecutor of a county who, in order to solve a case, employs the use of the testimony of an accomplice and co-participant in the crime?

A. No, sir.

Q. Do you find any fault with the prosecutor of a case wherein accomplice testimony is used?

A. No, sir.

Q. Will you look at the testimony of accomplices, in pursuance to the Judge's instructions, with care and caution?

A. Yes, sir.

Q. Is your state of mind such that you believe that even a [fol. 1703] bad man can tell the truth?

A. Yes, sir.

Q. If accepted as a juror in this case, will you look at every bad thing there is in connection with an accomplice? I will not go into all of the bad things you will hear about it before the case is over, but will you look at his past criminal record and anything there is that can be used against him, and will you consider those things?

A. Yes, sir, everything that is admitted.

Q. By the same token, if accepted, will you devote your mental faculties to finding out whether this accomplice is telling the truth about the perpetration of the crime by these defendants and himself as a group or combination?

A. Yes, sir.

Q. Will you use common sense and understanding in finding that out—I don't mean to be facetious, but I mean in all fairness—I don't mean to be offensive, but will you use common sense in figuring that out when you hear the testimony, and weigh all the facts?

A. I will.

Q. Will your efforts be devoted to a determination of whether or not what the accomplice says about the commission of this crime is true, with respect to the part played by the defendants and himself?

A. Yes, sir.

Q. The Court will instruct you that the testimony of an accomplice or co-participant must be corroborated; will you follow that instruction of law?

A. Yes, sir.

Q. Will you endeavor to apply it to the facts in this case?
[fol. 1704] A. Yes, sir.

Q. Should the Judge tell you, in words or substance, that it is not the duty or the burden of the prosecutor to corroborate each and every item in the case that an accomplice testifies to, but that independent testimony, if believed by the jury, may be accepted as corroboration when it tends to connect the defendant with the commission of the crime, will you apply that instruction of law to the facts in this case?

A. Yes, sir.

Q. Do you find any fault with that instruction on the law?

A. No, sir.

Q. You did say you would follow the instructions that the Judge gave you?

A. Yes, sir.

Q. Is your state of mind such that the instruction on the law is contrary to some idea you have now?

A. No.

Q. In other words, may I go along with the understanding that, in so far as the law is concerned, you will take it exclusively from Judge Taylor in its every aspect?

A. Yes, sir.

Q. And that you have no bias or prejudice against accomplice testimony that would cause you to reject testimony solely because it came from an accomplice?

A. No, sir.

Q. When I spoke to the prospective juror alongside of you, I directed his attention to the fact that one of the lawyers for the defendant Buchalter brought out that his client had been convicted for a past crime and is now serving a long term in jail—do you follow me?

[fol. 1705] A. Yes, sir.

Q. Would you relax your attitude as a juror in this case solely because a man has been convicted for a past offense and is paying the penalty?

A. No, sir.

Q. Would you deviate from a just result in a murder charge solely because he is in jail for another offense?

A. No, sir.

Q. In other words, I may go on that there will be no sanctuary in jail because he is serving time for the past offenses, for the commission of this crime?

Mr. Barsby: I object.

Mr. Turkus: I will not press it. Disregard it.

Q. With respect to the allocation of testimony in the case, if you find the testimony pertains to all of the defendants in a group and you find that, because the Judge explains the law to you, will you apply it to all three?

A. Yes, sir.

Q. If you find, after you hear the law from the Judge, that certain items of testimony apply to only one defendant, will you apply it that way?

A. Yes, sir.

Q. To certain pieces of testimony?

A. Yes, sir.

Q. If you find that certain other pieces of testimony apply to two defendants, will you apply that to the two against whom the testimony is received?

A. Yes, sir.

Q. In short, if accepted as a juror in this case, will you endeavor to do justice by your verdict?

A. Yes, sir.

Q. Will you talk the case over fairly and reasonably with [fol. 1706] your other jurors?

A. Yes, sir.

Q. After you have heard the evidence in the case and are satisfied beyond a reasonable doubt that Buchalter, Capone and Weiss are guilty of murder in the first degree, will you say that in your verdict?

A. I will.

Q. Will you say that without fear or hesitation?

A. Yes, sir.

LAWRENCE A. SIFERT, of 1060 Carroll Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. You corrected the address on your prospective service slip?

A. You have the right address. About twenty-five years ago I lived there.

Q. Your address is listed as Carroll Street. I think the Clerk read out the wrong address. At any rate, is Carroll Street part of the Crown Heights district?

A. Yes, sir.

Q. Have you lived there for a number of years?

A. Yes, sir.

Q. I think you said prior to that you lived in Bay Ridge.

A. We used to call it Kensington.

Q. You are listed on this board as an investment adviser; is that correct?

A. Yes, sir.

Q. Has that got something to do with securities?

A. Yes, sir.

Q. You advise people on the purchase of securities?

A. Yes, sir.

[fol. 1707] Q. Have you been doing that for a number of years?

A. Twenty years.

By the Court:

Q. You live near Washington Avenue?

A. Between Bedford and Washington.

By Mr. Turkus:

Q. Do I pronounce your name right, Sefert?

A. Sifert.

Q. Don't hesitate to talk loudly, so the stenographer can hear you. I take it you heard the questions about the garment industry and the clothing industry and the clothing trucking industry?

A. Yes, sir.

Q. Does your business bring you into contact with any people in those industries?

A. No, sir.

Q. Or with any persons within the area in which these industries are located?

A. No, sir.

Q. Have you any contact in Brownsville or East New York or on the Brooklyn waterfront?

A. No, sir.

Q. You have no connection with union officials or with officials of the Amalgamated Clothing Workers of America, or the Clothing Truckers Union or with any of the Teamsters Unions?

A. No, sir.

Q. With respect to the nine lawyers representing the defendants, do you know any of them?

A. No, sir.

Q. Something has been said by one of them that they are working independently of one another—I don't make mention of that because the defendants can have as many law-[fol. 1708] yers as they want. I simply say that to find out if you know anybody connected with those lawyers or employed in their offices.

A. Not as I know of.

Q. Do you know intimately any member of the bar who specializes in the defense of criminal cases?

A. No, sir.

Q. Do you know Judge O'Dwyer, the District Attorney of this county, personally?

A. No, sir.

Q. Or any Assistant District Attorney personally who is on his staff?

A. No, sir, not to my knowledge.

Q. At any rate, in this prosecution there is Mr. Joseph and Mr. Klein, who has been coming into the room—coming

in and out most of the time, and myself—my name is Turkus. Do you know any of those names?

A. No, sir.

Q. There will be certain doctrines of law charged to the jury with regard to the constitutional rights and safeguards that every man who is charged with crime is given under our law. Do you follow me?

A. Yes, sir.

Q. Would you apply the instructions of law that the Judge gives you with respect to the facts in this case?

A. Yes, sir.

Q. Would you give the defendants on trial the benefit of every presumption, every doctrine, and every principle of law that Judge Taylor says they should have?

A. Yes, sir.

Q. (Addressing other jurors in box): Will you, Mr. Cummings, and you?

A. Yes, sir.

Q. Have you heard us talking about the testimony of [fol. 1709] accomplices?

A. Yes, sir.

Q. Is there anything in your mind now that would cause you to reject the testimony of an accomplice solely because he was an accomplice?

A. No, sir.

Q. Do you find any fault with the prosecutor of the county who, in order to solve a murder case, accepts testimony of an accomplice and uses it against other perpetrators of a crime?

A. No, sir.

Q. Do you find any fault with the prosecution of an indictment wherein the testimony of an accomplice is used against the remaining perpetrators on the trial?

A. No, sir.

Q. There will be many questions put to you by the lawyers representing the defense about all the items to be considered in connection with the testimony of an accomplice. I will not go into that because it will only be repeated and it will serve no beneficial or useful purpose, but I will make some mention of it so you will know what I am talking about.

Will you consider the fact that an accomplice has a past criminal record and he has had past criminal associations,

and he has done every bad and immoral thing in his entire life and background, in weighing his believability?

A. Yes, sir.

Q. Will you follow the Judge's instructions on the law that, with respect to accomplice testimony, the jury must accept that testimony with care and caution?

A. Yes, sir.

Q. Will you devote your mind to ascertaining whether [fol. 1710] what an accomplice says about the group or participants in the commission of this murder is true?

A. Yes, sir.

Q. Will you use common sense and understanding in applying yourself to the problem to find out is he telling the truth about the part which he says he and each of these defendants played in the murder?

A. Yes, sir.

Q. Will you follow the Judge's instructions on the law that there can be no conviction upon the unsupported or uncorroborated testimony of an accomplice?

A. Yes, sir.

Q. Will you follow the instructions of law, if it is in words or substance, that even if the prosecutor had one thousand accomplices, the purpose is not served any better than with one, and that if the case only rested upon the testimony of an accomplice it would be your duty to acquit—would you follow those instructions?

A. Yes, sir.

Q. Now, with respect to the corroboration of an accomplice that is required by law, should the Judge charge you in words or substance that it is not necessary for the prosecution to corroborate and support by independent proof every detail of the testimony given by an accomplice, will you follow that instruction of law?

A. Yes, sir.

Q. Would you endeavor conscientiously to apply it to the principles in this case and the facts in this case?

A. Yes, sir.

Q. Should the Judge charge you in words or substance that the jury may find corroboration from credible evidence [fol. 1711] which tends to connect the defendants and each of them with the commission of the crime, will you follow that instruction of law and conscientiously endeavor to apply it to the facts in this case?

A. Yes, sir.

Q. Have I made myself clear as to those principles?

A. Yes, sir.

Q. Where is your office, Mr. Sifert?

A. The firm I was with dissolved at the end of August, sir.

Q. Where was that firm?

A. No. 63 Wall Street.

Q. What was the name of the firm?

A. Lord——

Q. Where were they?

A. 63 Wall Street.

Q. How long were they in business?

A. Twenty-three years.

Q. You said you were an investment adviser?

A. They were investment advisers.

By the Court:

Q. Were they licensed as private bankers under the State Law?

A. No, sir, not private.

Q. Incorporated as a bank?

A. They were partners.

Q. Licensed by the State Banking Department?

A. No, they do not come under that; they are investment bankers and members of the Exchange.

Q. The Big Board?

A. The Little Board, the Curb.

Q. They are a curb house; they take no money on deposit, they do not discount negotiable bills or notes?

A. No, sir.

Mr. Turkus: Even though you want us to go into the ex-[fol. 1712] amination of the jurors at once, I am not in the best of shape. I am not saying that for any excuse, but I want to be in a condition where I can finish the trial in which I am engaged. May we now have an interruption? This is a difficult task, and I am under the doctor's care now.

The Court: You mean you would like to sit down a while?

Mr. Turkus: Yes, and let somebody else work.

Mr. Barshay: I think it is pretty late now.

The Court: Oh, no, we will continue.

Mr. Barshay: I have work to prepare.

The Court: This is just a matter of one counsel obliging another.

Mr. Barshay: We have been on our feet since ten o'clock.
The Court: Continue.

By Mr. Turkus:

Q. Is the work you are doing now the work of handling estates, investments of estates?

A. Yes, sir.

By the Court:

Q. Were you on the Exchange or were you in the office?

A. In the office.

Q. Your duties amount to what?

A. Investment buyer.

Q. You mean a customers' man?

A. That was my real province.

By Mr. Turkus:

Q. I don't know whether I inquired of you whether or [fol. 1713] not you would take a prejudicial attitude as a juror in this case solely because one of the defendants has been convicted of past crime and is now paying the penalty for this conviction.

A. You did not ask me that.

Q. With respect to the allocation of evidence in the case, will you, when you get the law from the judge, will you weigh what testimony applies to one defendant, and will you apply it against that defendant alone?

A. Yes, sir.

Q. And obviously, in applying the principles of law, where you see the evidence applies to all defendants as a group, will you apply it in that shape?

A. Yes, sir.

Q. Nevertheless, you understand, don't you, that you will follow the instructions of the Court that each defendant has a right to and must have a separate consideration of the case against him?

A. Yes, sir.

Q. Will you two gentlemen (indicating other talesmen) do likewise in appraising the testimony?

A. Yes, sir.

Q. And if selected in the case, Mr. Sifert, will you endeavor by your verdict to do justice in the case?

A. Yes, sir.

Q. Will you talk the case over reasonably and with common sense with the other jurors?

A. Yes, sir.

Q. After you have heard all the evidence in the case and you are satisfied beyond a reasonable doubt that there are three guilty men at this bar of justice, Buchalter, Weiss, and Capone, would you have any fear or hesitation in so [fol. 1714] saying in your verdict?

A. No, sir.

(9:07 P. M.)

Mr. Talley: On behalf of counsel for the defense, I do not think there will be any opposition from the District Attorney, I make the request we now adjourn. We have been engaged here since ten o'clock this morning, and we cannot do justice to our clients' interests by being compelled to work any longer in this matter of selecting a jury. It will take an hour for most of us to get home, and we have to be here tomorrow at ten o'clock. We are quite as anxious as your Honor to get this jury selected.

The Court: I think the Judge is just as tired as any lawyer in the case, but we will have to continue for the present to justify the expense of the night session. We have hardly begun it.

Mr. Rosenthal: Except the Judge can go home when he is finished, whereas I have to look in the office.

The Court: We will not argue it. The Court rules the case must proceed.

Mr. Talley: I respectfully request that it be noted on the record that this request was made at nine o'clock.

The Court: It is not reviewable.

Mr. Rosenthal: It was several minutes after nine when this request was made.

The Court: The Court is trying to see that some degree [fol. 1715] of expedition it achieved.

Mr. Talley: The delay has not been due to counsel on either side.

The Court: Say nothing more, because we will proceed.

Mr. Talley: All right. I respectfully object to your Honor's refusal to adjourn at seven minutes past nine o'clock.

GEORGE E. CARLSON, of 550 Seventy-fourth Street, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Mr. Carlson, do you live in the Bay Ridge section?

A. Yes, sir.

Q. Is "salesman" a correct listing?

A. Yes, sir.

Q. What kind of business?

A. Wholesale woolens, material for men's wear.

Q. Where is your place?

A. 18 West 46th Street.

Q. Does your business bring you in the garment district of Manhattan or the clothing district?

A. You mean manufacturing?

Q. Let me ask you it this way: Does your business bring you in contact with manufacturers of ready-to-wear suits, for example?

A. No, sir.

Q. Or of ladies' garments of any kind?

A. No, sir.

Q. Or of any clothing truckers?

A. No, sir.

[fol. 1716] Q. Are your woolens sold to individual dealers throughout the City to make up suits to order?

A. Yes, sir.

Q. So that you then have no connection with manufacturers in the clothing or garment district?

A. No, sir.

Q. Do you know any of the names, or is there any familiarity in your mind with the names of union officials connected with the Amalgamated Clothing Workers of America?

A. Not at all.

Q. Do you in your line have any contact with union officials connected with the clothing industry?

A. No, sir.

Q. Or with clothing trucking?

A. No, sir.

By the Court:

Q. You sell to Manhattan dealers only?

A. Manhattan dealers only.

Q. What is the name of your concern?

A. William Ack & Company, Inc.

Q. And the address?

A. No. 18 West 46th Street.

By Mr. Turkus:

Q. I mentioned certain names to the various prospective talesmen. Are you acquainted with those names?

A. No, sir.

Q. What particular line of woollens do you specialize in?

A. Clothes, for men's wear.

Q. Was there any familiarity in your mind with any of the names I mentioned?

A. No.

Q. I take it you are in sympathy with the enforcement [fol. 1717] of the Penal Law.

A. Yes, sir.

Q. And that you will give, as instructed by the Court, every presumption and every constitutional, legal safeguard to the defendants that the law says every man on trial should have?

A. Yes, sir.

Q. Do you know any of the lawyers in the case?

A. No, sir.

Q. Do you know anyone connected with their office?

A. No, sir.

Q. Do you know the prosecutor of the county, Judge O'Dwyer, or any Assistant District Attorney on his staff?

A. No, sir.

Q. Do you know any lawyer or member of the bar who specializes in the defense of men charged with crime?

A. No, sir.

Q. With respect to your feeling about the prosecution which employs the use of accomplice testimony, have you the same idea, as have the other jurors alongside of you?

A. Yes, sir.

Q. In other words, is your state of mind such that you understand that even a bad man can tell the truth?

A. Yes, sir.

Q. Will you apply your mental faculties to find out is the accomplice telling the truth about the part that each of these defendants played with him in committing this murder?

A. Yes, sir.

Q. Will you, like the other jurymen, use common sense and understanding in finding that out?

A. Yes, sir.

Q. Will you apply every legitimate and reasonable test to the believability of the accomplice witness that should be [fol. 1718] employed?

A. Yes, sir.

Q. Will you consider everything to his disadvantage, everything that goes in derogation to his believability in weighing his testimony?

A. Yes, sir.

Q. Will you accept the instructions of the Judge that you use care and caution in weighing the believability of accomplice testimony?

A. Yes, sir.

Q. Nevertheless, will you devote your entire energies and mental faculties to find out if what this accomplice is saying about these defendants and the part that each one of them played in the crime is the truth?

A. Yes, sir.

Q. Will you follow the Judge's instructions on the law that there can be no conviction upon the unsupported testimony of accomplices, no matter how believable the accomplice's story is?

A. I will.

Q. And if the case rested only on the testimony of accomplices, you would have no recourse—if they were accomplices—as a matter of law the Judge would direct you to find a verdict of Not Guilty, or if they were accomplices and you found them to be accomplices, and that is all you had in the case, you would have no recourse, no matter how much you wanted to, you would still have to acquit under the Judge's instructions. And will you use common sense and understanding in finding out who is an accomplice in the case?

A. Yes, sir.

Q. Will you, in the event that all three lawyers should [fol. 1719] urge that everybody in the case who testifies against their clients are accomplices, will you make up your mind who the accomplices are for yourself?

A. Yes, sir.

Q. Do you believe, the same as Mr. Cummings and the others jurors, about the incarceration of the defendant

Buchalter, that you will not relax or deviate from your duty as a juror in this case because he has been punished for past crimes?

A. Yes, sir.

Q. If selected, will you by your verdict endeavor to do justice in the case?

A. Yes, sir.

Q. And if the prosecution satisfied you from all of the evidence in the case, and you are convinced beyond a reasonable doubt that Buchalter, Weiss, and Capone were the three killers of Joseph Rosen, as alleged in the indictment, will you hesitate, will you be fearful to say so?

A. No, sir.

HERMAN F. BELL, of 1821 Glenwood Road, Brooklyn, New York, was examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Have you lived in Flatbush for a number of years?

A. In that location about four years.

Q. Prior to that did you live in some other district?

The Court:

Q. You live on the corner of East 19th Street, the north-west corner.

A. Yes.

[fol. 1720] Q. On the trestle board your position is that of certified public accountant.

A. Yes, sir.

Q. In order to become a certified public accountant you went through college?

A. Yes, sir.

Q. And received various degrees?

A. Yes, sir.

Q. Your work has been such that you have been using your mind and applying it to that particular business for many years?

A. Yes, sir.

Q. Are you in business for yourself or is that a firm?

A. I am a member of a firm.

Q. Do you have any connection with any of the industries I mentioned to the other jurors?

A. Yes, sir, we have clients in practically all the districts.

Q. In the garment center district?

A. Yes, sir.

Q. Are they manufacturers of clothing?

A. I said before we have them practically all over.

Q. Do you come in contact with any manufacturer of men's or ladies' clothing?

A. I have at times.

Q. Has that been recent?

A. Well, we have some firms now who manufacture ladies' garments, as I say.

Q. Has your contact with those clients been limited to the work you do or your firm does as certified public accountants?

A. Yes, sir.

Q. You have made no social contacts with any persons in these industries?

A. No, sir.

[fol. 1721] Q. Is that true with respect to the Brownsville and East New York areas of Brooklyn and also the waterfront?

A. I would say so.

Q. Do you come in personal contact with any of your clients in these areas?

A. I have, at some time or other.

Q. Have you had any recent talks with clients in Brownsville or the East New York area?

A. No, as I recall.

Q. Have your contacts been limited to your work or the work of your firm as a certified public accountant?

A. Yes, sir.

Q. Would you make the same response as the other jurors did with respect to any acquaintance with any of the names I mentioned?

A. Yes, sir.

Q. You have no connection or no contact with any persons by the names I mentioned?

A. Yes, sir.

Q. Are you in sympathy with the enforcement of the criminal law?

A. Yes, sir.

Q. Will you follow the Judge's instructions on the law in the case and give the defendants the benefit of every constitutional right and safeguard that the law says they should have in criminal cases?

A. Yes, sir.

Q. Will you, if you are satisfied that the proof establishes guilt beyond a reasonable doubt, say so in your verdict?

A. Yes, sir.

Q. Do you have any bias or prejudice against the prosecution which uses the testimony of one perpetrator of a [fol. 1722] crime against the others?

A. No.

Q. Do you have any fault to find with the prosecution of an indictment wherein accomplice testimony is used?

A. No sir.

Q. Will you devote your mental faculties in ascertaining whether an accomplice speaks the truth about the participation and the part that each of the defendants played in the commission of this murder?

A. Yes, sir.

Q. Will you follow the instructions on the law with respect to corroboration, or the supporting evidence that is required?

A. Yes, sir.

Q. And if the testimony of an accomplice, standing alone, would not be sufficient to warrant a conviction, and you were so instructed by the Court, to acquit in such a case, would you do it?

A. Yes, sir.

Q. Should you be instructed by the Court that corroboration of an accomplice need not go to every single piece and parcel of the accomplice's testimony, but that, on the contrary, belief by the jury of independent evidence which tends to connect the defendants and each of them with the commission of the crime may be deemed sufficient by the jury, would you accept that instruction of law?

Mr. Barshay: I object.

By the Court:

Q. Would you follow the instructions of the Court in that respect?

A. Yes, sir.

[fol. 1723] By Mr. Turkus:

Q. Do you feel, as do the other jurors with respect to the incarceration of the defendant Buchalter, that you will not relax your duty as a juror or deviate from a proper decision simply because he has been convicted of other crimes?

A. No, sir.

Q. And with respect to the allocation of testimony, will you, like the other respective talesmen, when you get the law from the Judge and when the testimony only applies to one defendant of the three, apply it to that particular defendant?

A. Yes, sir.

Q. And where it applies to all three of the group or combination, will you apply it that way?

A. Yes, sir.

Q. Will you endeavor by your verdict to do justice in this case?

A. Yes, sir.

Q. If the People of the State of New York establish to your satisfaction beyond a reasonable doubt not only that the accomplice is telling the truth as to the part that he and each of these defendants played, if you are satisfied beyond a reasonable doubt with the other supporting evidence, that the defendants are involved in the commission of this crime, will you say so by your verdict?

A. Yes, sir.

Q. And if you are satisfied by the testimony that Buchalter, Capone, and Weiss are the three killers of the victim named in the indictment, will you say so in your verdict, if you are satisfied beyond a reasonable doubt?

A. Yes, sir.

[fol. 1724] Q. Without fear or hesitation?

A. Yes, sir.

Q. Mr. Carlson, did I understand that you said you were employed by William Haas & Company?

A. I did not say the first name—By Haas & Company, Incorporated.

Q. You mentioned William—that is the way I got it.

A. Yes, sir.

Q. Is Alfred Haas a person interested in that corporation?

A. That I do not know.

Q. Are you acquainted with him?

A. No, sir.

Q. Do you know of any relationship between the two?

A. I only know Harry Haas.

Q. Let me bring it to your attention: Assuming that Alfred, if I may say so, is a brother of Harry, the man whom you know, and let us assume I was to tell you that in the past I have frequently represented that gentleman, would that knowledge in any wise embarrass you in the discharge of your duty as a juror here?

A. No, sir.

Q. In any event, you are now informed of that?

A. Yes, sir.

By Mr. Barshay:

Q. Mr. Bell, haven't you been on the Grand Jury in Brooklyn?

A. No, sir.

Q. Never?

A. No, sir.

Q. Or a special jury?

A. No, sir.

Q. Have you been a juror in any criminal case?

A. I was called for jury — a number of years ago in the court over which Judge Taylor was presiding, and I was [fol. 1725] put on one of these juries but no case was tried. I was on the petit jury.

Q. Were you ever on the Federal Grand Jury?

A. No, sir.

Q. What is the name of your concern?

A. Lybing Roch Bros.

Q. And the address?

A. No. 90 Broad Street, Manhattan.

Q. Has your firm ever done any special work for the City of New York?

A. I am not quite sure; I don't recall.

Q. Which branch of the City of New York is it that your concern did work for?

A. About twenty-two years ago we did a considerable amount of work for the State Engineering Department, widening the Erie Canal, during the World War.

Q. Any other customers?

A. I don't know. I was on that job myself; that is why I know about it.

Q. Have you read about this case?

A. Nothing except the notice of trial.

Q. Have you read about it in the newspapers?

A. The first time I heard of the case is when I was called here as a juror.

Q. Have you heard about the Rosen case?

A. No, sir. I know practically nothing about the case except what was set forth in the indictment as I understand it.

Q. In other words, some place you read that these three defendants were accused of crime?

A. Yes, sir.

Q. Specifically mentioned in this indictment?

A. Yes, sir.

Q. Have you heard it discussed any place?

A. No.

Q. Have you formed any opinion with respect to this case?

A. No, sir.

[fol. 1726] Q. Have you ever read about the defendants?

A. Somewhat, yes, sir.

Q. May I ask when and where?

A. I read two articles in the *American* or *Journal* and some articles in the *Mirror*.

Q. May I know when you read those articles?

A. Between August 4th and September 15th.

Q. By virtue of reading those articles you gained some impression about the defendants?

A. Not particularly.

Q. Did you gain any impression?

A. No, sir.

Q. Have you formed any idea about them?

A. No, sir.

Q. Do you accept what you read as true?

A. I do not.

Q. Have any of the facts remained in your mind?

A. I think I remember what I read.

Q. Whatever you read, do you remember it now?

A. Yes, sir.

Q. Have those facts influenced you to form some idea about the case?

A. No, sir.

Q. Did you read something with respect to the life of Judge O'Dwyer?

A. As I recall, yes, two articles in the *American*.

Q. Were the names of the defendants mentioned in that article?

A. I think the names of two defendants were mentioned.

Q. Would that influence your judgment with respect to them?

A. No, sir.

Q. Are those articles impressed on your mind now?

A. Not particularly so; I read them a number of weeks [fol. 1727] ago, like every thing else I read.

Q. Just at present, whether you read about them or you did not, or whether you heard about them, have you any idea about the defendants at all?

A. No, sir.

Mr. Barshay: May Mr. Rosenthal address the Court?

(Mr. Rosenthal appeared before the bench with Mr. Turkus and conferred with the Judge without the hearing of the panel.)

The Court: We will take a recess until tomorrow morning at ten o'clock. The jurymen, tentatively and otherwise, are admonished not to read about or discuss the case. The defendants are remanded.

(At 9:35 P. M. a recess was taken until Wednesday, October 8, 1941, at 10:00 A. M.)

[fol. 1728]

Brooklyn, N. Y., October 8, 1941.

Trial Resumed

(At 10:00 A. M. a conference was held in the chambers of the Judge, at which all counsel for the defendants and Mr. Turkus, representing The People, were present. The conference was in relation to the defendant Capone's physical condition. The Court directed that Dr. Nash or some other competent medical man make an examination and report on Capone's present condition and on the prognosis as to recurrence.)

(At the convening of court, Judge Taylor announced to the talesmen:)

The reason for the delay in coming on the bench was that a matter arose which necessitated a discussion between Court and counsel. We will now proceed.

HERMAN F. BELL, a talesman, was then interrogated as to his qualifications to serve as a juror.

By Mr. Rosenthal:

Q. Mr. Bell, Mr. Barshay started last night questioning you, so I will continue where he left off. You made an application, didn't you, to be excused from jury duty?

A. On August 4th.

Q. Has the reason or cause for that application been dissipated?

A. No, sir; I asked to be excused by reason of pressure [fol. 1729] of work.

Q. That has been cleared up now?

A. To some extent.

Q. When you say "to some extent," is the situation now of such a nature that if you are called to serve here you could lay aside your business and devote your entire attention to the testimony in the case?

A. I think I can.

Q. Of course, it is your state of mind that I am trying to inquire into. I have no way of ascertaining that except by your answers. The question is, have you the ability—it is up to you. Have you the ability, in view of the pressure, as you say, of your work, to lay your thoughts of your work aside so as to be able to devote your attention strictly to the testimony of the witnesses, having in mind once the trial begins you are, in all probability, going to be kept together and housed together?

Mr. Turkus: I object to that as having been already answered.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. Have you the state of mind at this time where you, in the event you are called as a juror, would be able to de-

vote your attention solely to the testimony of the witnesses without having in mind this pressure of work which you say you have?

Mr. Turkus: Objected to as already answered.

The Court: Repetitious. Objection sustained. He does [fol. 1730] not have to be persuaded he cannot.

Mr. Rosenthal: I am asking him whether that is his condition. I still wish to know his state of mind.

Q. Will you be able to lay aside your business so as to be able to concentrate solely upon the evidence as it is brought forth in this trial?

A. Yes, sir.

Q. You say that you have business transactions in the garment center and all over—that is, in accordance with your work?

A. I did not say "the garment center," I said the garment district.

Q. By that you mean in and about the locality of New York, where the garment trade is?

A. That is a part of that section, yes, sir.

Q. Do you know of any individual clients you may have there?

A. Now or in the past?

Q. At present or within the last two or three years.

A. Most of the buyers in the district that I have been in direct connection with are in the retail business.

Q. What are they, garment makers or just sellers at retail of made-up clothes?

A. Primarily ready made.

Q. You say you read two articles in the *Journal*?

A. I think so.

Q. Do you distinctly remember that the articles which you read were after you were first called for jury service?

A. Yes, sir.

Q. In other words, you were called on August 4th, and [fol. 1731] did you appear in court?

A. Yes, sir.

Q. Were you in court during the entire session until it was adjourned on that day?

A. Yes.

Q. Until the Court excused the jurors?

A. Yes, sir.

Q. Then after you were excused you read the two articles in the *Journal*?

A. Not on that day, sometime.

Q. Between the period commencing August 4th and ending when you came here on the second occasion?

A. Yes.

Q. In addition to reading the article in the *Journal*, you also read the articles in the *Mirror*?

A. Some articles in the *Mirror*.

Q. Prior to your being called for jury service you had not read any article either in the *Mirror* or in the *Journal*?

A. About the defendants?

Q. Yes.

A. No, sir.

Q. Was it because of the fact you had been called as a jurymen that you then read the articles?

A. Well, I never heard of some of these people before.

Q. You wanted to find out who they were?

A. I read the article.

Q. Was it for the purpose of ascertaining in your mind before they were called who they were?

Mr. Turkus: Objected to as already answered.

Mr. Rosenthal: Question withdrawn.

Q. You say you had never heard of the defendants before?

[fol. 1732] Mr. Turkus: Objected to as already answered.

The Court: Objection overruled.

A. I said I never heard of two of the defendants.

Q. You had never interested yourself in any articles in the *Mirror* before, had you?

A. I had never seen any articles.

Q. Are you a subscriber to the *Mirror*? Is that one of the papers you read?

A. Not regularly. Sometimes my wife brings the paper home.

Q. After you had been called as a jurymen you read the articles, a few articles, in which the names of some of these defendants were mentioned?

A. Yes, sir.

Q. You read them through from beginning to end?

A. Yes, sir.

Q. What was your reason for reading them, the fact of not having heard of the men before, you wanted to acquaint yourself with who or what they were?

A. Well, it was interesting reading, yes.

Q. What you read in the article in the *Mirror* you first saw interested you to such an extent you then, in your own mind, figured you would read several more articles?

A. I read some more.

Q. Was it because of the interest you took in what you read in the first article of or concerning any one of these defendants that you continued to read the other articles?

A. Yes.

Q. Was it also because of the fact that you are a regular subscriber to the *Journal*?

[fol. 1733] A. My daughter takes it once a week Saturday.

Q. Did your daughter call your attention to the fact that after you had been called for jury service the names of one or more of these defendants were mentioned in the article concerning Judge O'Dwyer, in the *Journal*?

A. I think so.

Mr. Turkus: Objected to.

The Court: Objection overruled.

Q. When she called your attention to the fact that there was a description in the *Journal* that contained the name of one or more of these defendants, did she also call attention or say to you in words or substance—whatever she calls you, "Pop," or "Father, here are the names of some of the men in the case where you expect to serve as a juror"? Did she direct your attention to that?

A. I don't know how she did it.

Q. What?

A. Yes.

Q. And when she did that you read the article through with interest?

A. Yes, sir.

Q. Then, being very interested in what you read, you again read a subsequent article or two on the same subject?

A. One more, I think.

Q. You digested thoroughly what you read of that in the *Journal* and the *Mirror*; in so far as the names of any one of these defendants were mentioned, didn't you?

A. I don't know what you mean by "digested."

Q. You retained it in your mind—you thoroughly read [fol. 1734] anything that was in either of these articles or any of these articles concerning any of the defendants?

A. I read the articles.

Q. And the reading of those were for the purpose of acquainting yourself with the names and the alleged activities of some of those defendants, before you were actually called here?

Mr. Turkus: I object.

The Court: I think you have gone into that enough. He shows apparently his curiosity was inspired after he was summoned as a juror.

Q. Did you hear the Judge tell all the prospective talesmen in the case on August 4th that it was their duty to refrain from reading any articles in which the names of the defendants were or discussing anything concerning them?

A. I heard him say that on September 15th. I have read nothing since.

Q. Who was it, if anyone, who told you there were articles in the *Mirror* which directed yourself to one or more of these defendants?

A. Simply someone in my household; they knew I was called for the jury and they mentioned the fact there was an article on the subject.

Q. Then did you discuss it with the members of your family?

A. No, sir.

Q. They simply handed you the articles as they appeared and told you, "Here are articles concerning men whom you [fol. 1735] are called to serve on the jury for?"

A. Yes, sir.

Q. And then after reading one article, they did the same thing when the other articles appeared, to the extent of your reading them?

Mr. Turkus: I object to that as ambiguous.

The Court: Overruled.

Q. Did you see a few in the *Mirror*?

A. Yes, sir.

Q. Did you see two in the *Journal*?

A. I think one or two.

Q. On each of the occasions was your attention directed by some member of your family to the fact that there were articles in the *Mirror* or in the *Journal* which mentioned the names of one or more of these defendants?

A. The first article they did.

Q. And as to the other articles, you read them of your own volition without having your attention called?

A. Yes, sir.

Q. Was that because at the bottom of one it said that the succeeding articles would be printed on the following day or so?

A. Yes.

Q. Having read below, or noticing the fact there would be succeeding articles, then, of your own volition, you read the succeeding articles?

A. Some of them.

Q. Did you read the headnote also that preceded the articles in the *Mirror*?

A. I suppose so; I cannot say; I glanced through them. I think I did.

Q. In the headnote was also a full description of some of the men on trial here, what they were supposed to have [fol. 1736] done; isn't that so? I will withdraw that question.

There was a headnote which preceded the article proper in the *Mirror*?

A. I think there was.

Q. And in the headnote was there an alleged description of the activities of one or more of these defendants?

A. I don't recall, except I think it said these prisoners were on trial for an alleged crime.

Q. You believed substantially what you read in that article?

A. I did not affiliate it in any way, shape, or fashion.

Q. Can you tell me the reason why you continued to read them?

A. Simply interesting, like I read a novel.

Q. You read them because it was interesting to follow, and appealed to you as sort of being novel?

A. Yes.

Mr. Turkus: Objected to as repetitions.

The Court: Objection overruled. Do you offer a challenge?

Mr. Rosenthal: I think in view of the Court's statement I will.

HERMAN F. BELL, residing at 1821 Glenwood Road, Brooklyn, New York, No. 2680, was sworn and examined on the challenge.

By Mr. Rosenthal:

Q. Now you are sworn and under oath?

A. Yes, sir.

Q. And were I to repeat the various questions which I asked you when you were sitting in No. 12 in the jury box, [fol. 1737] would you answer them in the same manner as you did at that time?

A. Yes, sir.

Mr. Rosenthal: I challenge for cause.

By Mr. Turkus:

Q. Did any of the newspaper articles you read—did they leave any impression in your mind as to the guilt or innocence of the defendants?

A. No, sir.

The Court: The Court feels this way about it: According to my recollection, the instructions were given on August 4th—I believe that was the date. Apparently this man did not hear the instruction, but nevertheless, it was important that that instruction be observed in order to get an impartial jury. This was not a simple, casual reading of one article, or glancing at the headlines, but was done for the purpose of obtaining information, and it would not make a nice-looking record if this man were taken on the jury. The challenge is sustained.

GEORGE E. CARLSON, a talesman, was then examined as to his qualifications to serve as a juror.

By Mr. Rosenthal:

Q. You work for Haas & Company?

A. Yes, sir.

Q. I think you said last night you are importers of woolen goods.

A. Woolens.

Q. You sell in the garment district, do you?

[fol. 1738] A. No, I sell to individual dealers, Manhattan dealers.

Q. In other words, you sell the tailor who makes up the suit of clothes?

A. Yes, sir.

Q. You have no connection whatever in the garment district?

A. None whatever.

Q. Is this your first jury service?

A. No.

Q. Have you served on a criminal case before?

A. No.

Q. Only civil?

A. Yes.

Q. Was that in Brooklyn?

A. Yes.

Q. I assume in the Supreme Court?

A. Yes.

Q. Did you, in the case where you served, have the benefit of the Court's charge and did the case go to the jury?

A. I did.

Q. Have you read any articles at all in respect to any of the defendants on trial?

A. I don't know anything about the case and did not before August 4th when I came in here. There was a short resume in the *Sun* that the case had started, and it said who the principals were in the case. That is what I read about the case.

Q. Are you a regular subscriber to the *Sun*?

A. Yes, sir.

Q. Do you read any other newspaper?

A. The *Times*.

Q. Did you appear here on the 4th of August?

A. I did.

Q. Was it subsequent to your appearance here that you read in the *Sun* about this?

A. It was during the say I was here, in the afternoon edition of the *Sun*.

Q. In the afternoon edition you saw the article?

[fol. 1739] A. Yes, sir, a short article.

Q. Did the article simply described three men were on trial charged with having participated in the killing of one Joseph Rosen?

A. That is right.

Q. Prior to that time had you at any time, either heard or discussed the name of any of the defendants or had you read anything concerning them?

A. Never.

The Court: There will be a recess for about half an hour. Gentlemen, please be in your places at a quarter of 12 o'clock. Remember the admonition heretofore given. This is necessitated by something which cannot be stated in open court for the record. The defendants are remanded. Talesmen who have not been called into the box may go until two o'clock.

(A short recess was taken.)

After Recess.

(The following took place in the chambers of Judge Taylor, all counsel being present, as well as Dr. Nash, Medical Assistant District Attorney.)

The Court: Doctor, will you state for the record what your examination was and what you found about Capone?

Dr. Nash: October 8, 1941, 11:20 A. M. At the request of Honorable Franklin Taylor, examined in my office, Room 704, Central Courts Building, Louis Capone, 43 years of age.

Chief Complaint: Says he has pain commencing between [fol. 1740] his shoulders, extending over the front of chest and down the left arm and sometimes both arms. Says he has dyspnea on exertion, that is, shortness of breath.

He produced two boxes of tablets, one labeled "Nitroglycerin", no strength of tablet noted; another tablet labeled "614", which he says was the number of his cell in the House of Detention, "Copen, one when necessary, Dr. Torre."

The Court: He took two of those last night before he [fol. 1741] got sick.

Dr. Nash: Physical examination: A healthy-appearing male adult of 43 years, about 5 foot 7 inches tall, weight

about 170 pounds, black and gray hair, eyes brown, fixed small pupils which react very sluggishly to light. Mouth hygiene is good. Teeth in good state of preservation. Chest: A well developed male chest cage, with equal lung expansion both sides; no rales heard throughout the lung or at the bases. Heart normal in size and position; rate 78 per minute, rhythm regular, no murmurs. Blood pressure, systolic, 150, diastolic 88.

The Court: What is that?

Dr. Nash: Systolic pressure is when the heart contracts, and diastolic is when it is relaxed, when we speak of high pressure.

The Court: Pulse pressure?

Dr. Nash: Pulse pressure in this case shows the heart reserve itself good.

The Court: That is about normal, isn't it?

Dr. Nash: Yes. The radial and temporal arteries are quite flexible, the latter showing slight signs of sclerosis, which is to be expected at his age.

The Court: By "radial", you mean what?

Dr. Nash: Over the radius in the wrist, where they usually take the pulse.

[fol. 1742] The Court: Where the artery divides and goes into the fingers?

Dr. Nash: That is right. The radial artery is the one we always take the pulse from.

The Court: Flexible?

Dr. Nash: Quite flexible.

The Court: No sclerosis?

Dr. Nash: The temporal artery shows slight signs of sclerosis, which is to be expected at his age. In January, 1941, he claims he was X-rayed and electrocardiograms were taken at Riker's Island.

Conclusion: From the above physical findings I see no reason why he is not physically fit to go on with his trial. I would advise he be prevented from carrying on his person both nitroglycerin and an unknown tablet, and that what medicines are found necessary be given by his keeper under medical advice. He has with him a lethal dose of nitroglycerin on his person which he could take with fatal result an overdose of.

The Court: He took a dose of nitroglycerin this morning.

Dr. Nash: He says he did not take it this morning.

The Court: I saw him take it.

Dr. Nash: Your Honor, that is a dangerous thing for a man to be carrying around with him, a box of nitroglycerin [fol. 1743] that he does not know the grains.

The Court: He brought it up from the direction of the lower pocket and he put it in his mouth this way and then he proceeded to chew it. Then I called the confidential attendant who was in the side jury box. I said, "Watch him and see if he takes more and let me know." He reported afterwards that he took no more but he continued to chew that one.

Dr. Nash: He could not chew a nitroglycerin tablet very long because it dissolves in a few seconds. They usually put it under the tongue. He does not know what these other tablets are, and "One when necessary" are the only directions.

The Court: What is the shape?

Dr. Nash: It is a round tablet. It might be anything, but it is a round tablet, and there is no mark on it. It might be bicarbonate; it might be anything. I think he should be deprived of those tablets for his own sake.

The Court: The Court cannot do that. He is under Federal custody.

Dr. Nash: No, Capone is not.

Mr. Talley: You do not find any heart condition at all, Doctor?

Dr. Nash: No.

[fol. 1744] Mr. Rosenthal: According to the cardiograms, they show a definite sclerotic condition.

Dr. Nash: So would you show it on X-ray and cardiogram.

Mr. Rosenthal: I assume he told you that those pills are not his wish, but were prescribed by the doctors and given to him under the doctors' orders in the jail, and were given to him principally because of the fact that there is no chance of medication in that jail, and between certain hours a man could pass out before he could get a doctor.

Dr. Nash: All material witnesses in the County of Kings happen to come under my supervision, and they are distributed in all the five boroughs and when it is my duty to prescribe medicine I always see that one of the keepers is in charge of that and that he gives him the required dose

at the required time, but never put the medicine into the hands of the witness or prisoner.

Mr. Rosenthal: I am not finding fault with you. I am only telling you what the doctors in the jail have done with him. Of course, possibly they do not put the name on it not to apprise him of what it is.

Dr. Nash: He has nitroglycerin marked.

Mr. Rosenthal: They must have in the jail a prescription book kept by the doctor which would show what the ingredients are. How otherwise would they keep track of what they give?

The Court: May I suggest something? It can be done right away. Check up on those reports and on the cardiograms, because those cardiograms are largely speculative.

Dr. Nash: Yes.

Mr. Talley: Doctor, you do not find any abnormal condition of him at all?

Dr. Nash: I don't.

Mr. Talley: He looks pale.

Dr. Nash: So would I if I were confined for nineteen months.

The Court: I suggest this, it is apparently O. K. to go ahead with the trial and be on the watch. I cannot assume the responsibility of depriving him of medication in view of what may happen and the interpretation that would be put on it, but whatever he takes is his own risk, and if he blows up, it is his own lookout. In the meantime, you check up on those reports.

Dr. Nash: Yes, I will.

The Court: And let us have something further, and we will get that on the record, and we will know more where we are and we will know whether or not to provide a medical attendant to sit with him and give him medication.

[fol. 1746] Mr. Rosenthal: Do you feel that the length of the day's work is more apt to bring on the condition, if he has it as they say he has, than if he had a normal day's work and could recline and rest for a greater period of time?

Dr. Nash: He is not under any physical exertion.

Mr. Rosenthal: No.

Dr. Nash: He is under mental strain, possibly, but it would not make any difference, it seems to me, unless the hours are too prolonged. That is something I would not

be qualified to say, how long the session should last. I should say perhaps it would be more advisable if——

The Court: Last night it happened at 9:30.

(In the courtroom—Trial Resumed.)

The Court: Gentlemen, a word of explanation is due. One of the participants in the trial was under the apparent necessity of a physical examination and report from a medical officer. The trial will now proceed.

(Mr. Rosenthal resumed questioning of the talesman.)

By Mr. Rosenthal:

Q. Mr. Carlson, I think I just finished asking you about the newspaper when a recess was declared. Other than what you described, I assume you read nothing concerning the defendants any place; is that right?

A. That is right.

[fol. 1747] Q. You heard nothing over the radio? Has what you heard discussed here since you have been a juror—man meanwhile affected your mind to the extent where any impression has been formed detrimental to one side or the other?

A. No.

Q. So that your mind now is free and open. Am I right in that assumption?

A. Right.

Q. Do you know anyone that is attached to the District Attorney's office?

A. No.

Q. And have you any relatives or immediate friends who are on the police force of the City of New York?

A. No.

Q. You understand that merely because the defendant—and I might make this clear to the four men who have not been examined, I don't wish to repeat these questions over again excepting in so far as in the mind of any one of you the answers that Mr. Carlson gives would be contrary to the answer that you give—there are just a few direct questions that I would like to direct to you individually, but generally speaking, on the propositions of law they would be the same if they were directed to you, and unless you disagree with Mr. Carlson you can make that fact known when

I address each one of you. I assume that is clear to you, is it not?

The mere fact that the defendants have been indicted here, does that raise any presumption in your mind as to their guilt?

A. No.

Q. You understand that that is merely a formal accusation put in writing, and that the minute a defendant says "Not guilty" he raises all the questions which are set forth in that indictment, and from that time on the District Attorney is the one that must prove those allegations to your satisfaction beyond a reasonable doubt before you can in any wise enter a verdict of guilty. That is clear to you?

A. Yes.

Q. You have heard a great deal about the question of accomplice, that has been mentioned both by the District Attorney and by defense lawyers. From all indications in the questioning of the District Attorney it is his intention to use what he terms is an accomplice to the defendants in establishing their guilt. That is clear?

A. Yes.

Q. Merely because the District Attorney says he is an accomplice of the defendants, that does not establish in your mind the complicity of the defendants with the particular individual, does it?

A. No.

Q. You realize that a man can be taking the stand who actually committed a crime and actually know all the details because he was there and he committed it, so that he would be able to say everything about a crime, but then he might make some mention of you, me, or some other person as being one of the participants, and that would not make us a participant; isn't that clear?

A. Yes.

Q. So that, under our law, as the Court will instruct you, in no case can a man be convicted on the uncorroborated [fol. 1749] testimony of an alleged accomplice. I use the word "Alleged" accomplice. Mr. Turkus uses the word "accomplice." You have no fault to find with the law of that character?

A. No.

Q. The law even goes further, and the Court will charge you that even if you were to believe that an accomplice was

telling you the truth, that even then you could not convict any man under our laws unless there was some other type of evidence independent of the word of the accomplice tending to connect the particular defendant with the crime. That is clear to you?

A. Yes.

Q. You find no fault with that, I assume?

A. No.

Q. There are numerous ways of introducing evidence which, in the estimation of the District Attorney, would tend to connect the defendant with the crime. One of the ways would be, and as I have stated and you probably heard, we don't know what their contention is until they open up and say, "Well, the defendant Capone committed this crime with this man on this corner, and admitted to somebody that he did commit it," if that is their proof; I do not know what it is. But, assuming that that is the case, and again at the expense of repetition, we have got to assume some of these things which may never come to pass in this case, but, being in the dark at this time, you realize that the questions are addressed in the event that such a circumstance does come about. That is clear?

A. Yes.

Q. In the event that the District Attorney were to rely [fol. 1750] upon an alleged, we call it an admission assumedly made to one person or more persons by the defendant, in which the defendant is supposed to have said to that person, "I, the defendant, admit to you, the witness, that I, the defendant, did participate in that crime"—is that clear as far as I have gone?

A. Yes.

Q. It then would be your duty, you understand, to ascertain the source from which this alleged admission comes. That is clear?

A. That is clear.

Q. If upon investigation of the source, either whether the man admits it because of the questions asked of him by the District Attorney or is compelled to admit it on the cross examination of one or more of the lawyers, it develops that that particular individual has been granted immunity so that he could not be prosecuted for a crime of murder in the first degree, or more than one crime of murder in the first degree, as well as numerous other crimes, including false swearing under oath in a court of competent juris-

diction similar to this, in which he appeared before a jury similar to the one that will preside in this case, you promise that you will take into consideration all of those facts plus the motive which that man may have in accusing the defendant of having participated or made the admission to him. Will you do that?

A. Yes.

Q. If after investigating into the background and the motive and the reason why that man would make that state-[fol. 1751] ment, plus his association with the other witnesses in this court and his opportunity to concoct a tail, for instance, if it were to appear that this man was housed in a hotel with other witnesses who claim that they were accomplices, over a period of time, where they had opportunities to rehearse what they might want to say on the stand, all those things, everything, including his manner, his demeanor, would you take that into consideration?

A. Yes.

Q. In determining what truth you would give to this case. If that was the form of the independent evidence, and a reasonable doubt was raised in your mind as to whether or not that individual was telling the truth by reason of the motive that he would have to lie, would you resolve that doubt in favor of the defendant, if a doubt was raised in your mind by reason of his motive and the other things which I have discussed?

A. Yes.

Q. You would not have any fear of finding a verdict for the defendant if the proof did not warrant a conviction, would you?

A. No.

Q. In other words, you realize that your duty when you are called here as a jurymen is not only to the People of the State but to the defendants—you understand that?

A. That is right.

Q. You understand that defendant is one of The People of the State of New York, and you are trying an impartial issue in which you as one of The People of the State of New York direct the District Attorney, who is your representative, to prove to your satisfaction beyond a reasonable [fol. 1752] doubt the accusation which he makes against another of The People of the State of New York. You understand that?

A. I understand.

Q. Your duty is to both. It is an equal duty.

A. That is right.

Q. Do you understand further that irrespective—and, being a human being, it is natural that you heard other jurymen with prejudices and other things, that, having heard them, in the back of your mind there may be some slight thought or impression, that irrespective of what you may have heard, and by now you have heard that there has been articles in the *Mirror* and the life of Judge O'Dwyer in the *Journal*—naturally you must know that because you have heard it discussed—irrespective of what you may have heard, the proposition which is confronting you is that the defendant, not only mine, but each one on trial, is entitled to be tried for this crime. I would not care what the defendants may have done or may not have done. I would not care what they may have paid their penalty for. They are being tried for a specific thing. They could be guilty of anything, but are they guilty of this, is the task that you have, and no other task. That is clear?

A. That is clear.

Q. And the only task that any of the lawyers are undertaking in this case is the task of establishing to your satisfaction even though it is the duty of the District Attorney to establish to your satisfaction beyond a reasonable doubt [fol. 1753] the guilt, we are only undertaking one specific thing, the defense of our particular client on this, and this crime alone; is that clear?

A. That is clear.

Q. If there are any other crimes, they will be heard at different times and different places, and different men will be called upon to hear whether or not they are guilty. Is that clear to you?

A. Yes.

Q. So that if you are called as a jurymen here, you will confine your duty solely to the task of ascertaining whether or not any one of these defendants participated in accordance with the instruction of law laid down by the Court, with the so-called accomplice called by the District Attorney, in committing this crime. Is that true, sir?

A. Yes, sir.

Q. Some of these names that have been read may or may not be familiar to you. There are two or three of them, and they have been observers here in the court-room, and

therefore I want to direct your attention to them to see whether or not you know either of them or know them. Do you know Captain Bals?

A. No.

Q. Do you know Lieutenant Osnato?

A. I do not.

Q. Or Paddy Meehan?

A. No.

Q. Or John McDonough?

A. No.

Q. You have heard other names. I cannot remember them—Slabo and a million other kinds of names.

A. I don't know any of them.

[fol. 1754] Mr. Turkus: Not a million.

Mr. Rosenberg: Each time you got a new one, so I have not been able to keep track of them. That might be a little exaggeration. We will withdraw the million.

Mr. Turkus: All right.

Q. In any event, has that impressed you?

A. Not at all.

Q. You know, I could ask you whether you know President Roosevelt, you know Governor Lehman, you know Mr.——

Mr. Turkus: I object to it. They have nothing to do with this inquiry.

Mr. Rosenthal: That is what I am coming to.

Q. But the mere fact that I mention the names of any individual, unless from the witness stand they have some connection with this trial, I assume has not been made to you by the District Attorney for the purpose of influencing you, but in any event, has it influenced you to any degree, the mention of so many names, with *nom de plumes* attached to some of them, has that in any wise influenced you in this case at all?

A. No, sir, not at all, because I don't know them.

Q. Not having sat on a criminal jury before, I assume you understand that you have a right to your opinion as formed by the evidence?

A. Yes.

Q. You understand that neither the Judge nor Mr. Turkus nor any of the lawyers have a right to convey to you their

impression of the facts and bind you to it unless your con-[fol. 1755] scientious idea of the facts agrees with what they say?

A. That is right.

Q. I may get up in summation and speak about the facts as I see them and it may be wholly in accord with the operations of your mind. In that event, of course, you will receive them for the value and aid that they may give to you. Then again I may get up and while I am talking you may be turning over in your own mind that your theory is entirely different than the one that I have. Your theory is the one that is controlling. You understand?

A. I understand.

Q. There are two distinct duties here, one the Judge taking care of the law, which you must take from him irrespective of your opinion—that you will do?

A. I will do that.

Q. The other the question of fact, which you take from nobody except the witnesses as they appeal to you. That is clear?

A. Yes.

Q. You understand that in the course of having sat in a civil case you might have heard a Judge in the course of his charge to you on the law take certain illustrations from the fact, and you may remember he told you, however, that he has no opinion as to the facts, he is only citing these instances to give you a better analogy to what the law really is, but your impression of the facts, nobody else is the one to find it. That is clear?

A. Yes.

Q. If in the jury room you come to a conclusion that the [fol. 1756] facts are, as they appeal to you, different than the facts are as they appear to other jurymen, you know that it is then your duty not to keep it quietly within your own mind but to immediately expose your reasoning to the other men and to quietly, calmly, and dispassionately listen to their reasoning. If after reasoning at length you are not convinced that your line of reasoning is erroneous, would you, merely because of your inexperience as a jurymen in a criminal trial, or because perhaps numbers are against you or the hour is late, or pressure of business or some other thing of that character, would you change the opinion that you formed, or would you retain it?

A. No.

Q. You would retain your opinion; is that correct?

A. That is correct.

Q. You understand that the verdict of the jury, if it is based upon their conscience, is sacred. That is their job. They are swearing that they are going to honestly and truly deliberate. No one else in the court-room, and nobody can be heard to complain what the verdict is as long as it is based upon reasoning from the evidence and not from any outside influence. That is clear to you?

A. That is right.

Q. Now, merely because the District Attorney may tell you that a man is an accomplice, that in and of itself is not going to convince you that he is?

A. No.

Q. You probably heard me explain to other men the fact [fol. 1757] that the Court may define certain witnesses as accomplices as a matter of law. He may say to you, "Witness So-and-so took the stand. I charge you, Mr. Carlson"—of course, he won't say "Mr. Carlson," but I am addressing you—"Gentlemen of the jury, I charge you as a matter of law that in considering the evidence of So-and-so, Mr. A, he is an accomplice, but I also say to you that as to Mr. B, there is evidence which warrants the submission to you of the question as to whether he is an accomplice or not." Is that clear?

A. That is clear.

Q. Will you, merely because the Court leaves to you the question of complicity of a particular individual, accept it as a fact that he is an accomplice, or will you ferret out his testimony in order to ascertain in your own mind whether he is an accomplice?

A. I will decide in my own mind.

Q. If you once determined he was an accomplice, would you view his evidence in the same light that the Court told you the evidence of the accomplice who he charged you as a matter of law was an accomplice was viewed? Is that clear?

A. I don't get that.

Q. If a man is once determined an accomplice, then the law is the same as to him whether the Judge tells you he is an accomplice or whether you find in your jury room he is an accomplice; is that clear?

A. Yes.

Q. So that if you determine he is an accomplice, will you apply the same rules of law laid down by the Court as to the [fol. 1758] accomplice which he charged you as a matter of law?

A. Yes.

Q. Now, regarding the question of the District Attorney—and before going to that I want to make sure, because jury-men were in and out of the court-room—I do not know if they have heard these questions or not—you realize that no man can be convicted, that the independent evidence which the District Attorney must have is not supplied by one accomplice corroborating another one? You understand that?

A. I understand that.

Q. If there were fifty or a hundred men here who said that they admitted participation in the crime and they all took the stand and said that the defendant Capone also was with them, that in law would be insufficient. You understand that? There is no greater weight attached to the piling up of accomplice testimony: is that clear?

A. That is clear.

Q. So that in ferreting through the evidence, if the case is finally submitted to you, you understand your job will be to find out whether there is any independent, believable evidence which would tend to connect the defendant with the crime. That is clear? Do you feel, sir, that the mere knowing of an individual by the defendant and having been in his company, in and of itself would prejudice you against this defendant, irrespective of the testimony as to his alleged complicity?

A. No.

Q. Making it clear to you, if a defendant were to take the stand and say, "Yes, I know some of these witnesses; they have visited a restaurant that I have, I have seen [fol. 1759] them, in fact, maybe I have been in a dice game or something, but as far as this crime is concerned, I had nothing to do with it"—would the mere admission of having known these persons or even having been in their company at some other time so influence you or prejudice you against that man that, irrespective of your belief as to the evidence, you would find a verdict of Guilty? That is the question.

A. No, I would not.

Q. Do you feel, sir, that when a defendant takes the stand, that his testimony is any less valuable than that of any other individual?

A. No.

Q. You don't feel that because he is accused of crime and then takes the stand, that the minute he offers himself that he has got to prove he is innocent?

A. No.

Q. You understand, sir, that if we saw fit, as the counsel for these men, we could say, "We rest upon what the law says is a substantial right, namely, that the defendant stand mute, offer no proof, and insist that the District Attorney establish to your satisfaction the guilt before you can convict." Now, when a defendant offers himself as a witness, of course you will take into consideration the interest that he might have and the motive. Naturally, he has an interest. He is here to resist a conviction, but that does not necessarily imply to your mind that he is lying, does it?

A. No.

Q. You understand that truth from the defendant is just as valuable as the truth from any other source?

A. Yes.

[fol. 1760] Q. Assuming that the defendant goes further and brings witnesses who have no past career of crime, and sets forth facts through those witnesses that creates a doubt in your mind as to whether this particular defendant did commit this crime; you would resolve that doubt in his favor?

A. Yes, I would.

Q. You won't feel, sir, that merely because we go forward and offer proof to you, that that in any wise shifts the responsibility of the District Attorney and puts any responsibility on our part to prove our innocence?

A. Am I correct in that assumption? Do you understand, sir, also, that an accomplice may be telling us the truth as to himself, for reasons best known to himself, and as to his complicity in any crime, and the truth as far as he is concerned regarding himself may be a hundred per cent—you understand that?

A. I understand.

Q. But you understand also that his statement as to others may be a hundred per cent false? That is clear?

A. That is clear.

Q. Now, the independent facts which you are required to seek—let me put it differently, so there is no objection—if the Judge were to tell you that the independent evidence which you are required to find in this case before you can find a verdict of guilty does not consist of the fact that there was a murder, and, to make it clear, this alleged accomplice goes on the stand and says, “Rosen was shot [fol. 1761] and killed in front of some place or other,” and then witnesses go on and say that Rosen was shot and killed at some place or other—if the Judge tells you that is not the independent evidence at all, the independent evidence that you must find is not that he was shot and killed as described by the accomplice, but that this defendant had something to do with it, that there was other evidence tending to connect this defendant with the crime itself, you would not find any fault with that instruction of law, would you?

A. No.

Q. And you would follow it clearly and conscientiously? Have you any fear or reluctance in finding a verdict of Not Guilty, if the facts warrant it?

A. No.

Q. Why I ask you that is, you have been asked, as all the men by Mr. Turkus—“reluctance” is out and “hesitation” is in—have you any fear or hesitation in finding a verdict of Not Guilty? Mr. Turkus asked every jurymen if he had any fear or hesitation in finding a verdict of Guilty if he finds at the bar of justice, and so forth and so on. I ask it in the other way: Have you any fear or hesitation? There is no use hiding the fact—this case has received publicity—but, whether it has or whether it has not, these men are entitled to jurymen of courage who have the courage to bring in a verdict according to their conscientious conviction as to the guilt or innocence of the individual on this and this charge alone—is that clear to you?

A. That is clear.

[fol. 1762] Q. Have you any fear or hesitation, in the event that the District Attorney did not convince you by competent, believable proof, truthful evidence, beyond a reasonable doubt of the guilt or participation by either one of these defendants in this crime, to come out and say so fearlessly, by pronouncing a verdict of Not Guilty? Have you any such fear or hesitation?

A. No, I have not.

The Court: There will be a dinner order, but I will ask the attendants who take the gentlemen out to please be sure to have them back at two o'clock sharply. The jury may retire. Do not discuss the case.

(The jury retired from the court-room.)

The Court: During the trial, each defendant remanded by reason of mealtime shall be detained in the court pen. All meals for prisoners shall be served in the pen under purchase and supervision by an officer designated for such purpose by the Chief or Assistant Chief Court Attendant. No gifts, either of food or otherwise, shall be permitted at the pen.

Defendants are remanded.

(Recess until 2:00 P. M.)

Afternoon Session—Trial Resumed

(All defendants represented by counsel.)

The Court: Proceed, Mr. Rosenthal.

(Mr. Rosenthal resumed questioning of the talesmen in [fol. 1763] the jury box.)

By Mr. Rosenthal:

Q. Mr. Carlson, just one other question: How long did you—(inaudible).

A. Three years.

Q. What was your business before that?

A. I am in the woolen business for the past thirty years.

Q. Were you connected with some other firm?

A. It was decided—

Q. Mr. Sifert, of course you listened to the questions which I asked Mr. Carlson. Is there any proposition which I advanced to him in my questioning where your answers would have been any different if they had been directed to you?

A. No.

Q. Would you mind, sir, telling me what papers you read?

A. The *New York Times*, *New York Sun*.

Q. And have you at any time read anything concerning this case, either before or subsequent to your being called for jury duty?

A. I suppose I read the headlines, if there were any, on the front pages.

Q. Have you any recollection of having read anything either about the case or about any of the defendants?

A. Not in the papers.

Q. In any other place?

A. No, just from what I learned here.

Q. So that whatever you have learned has been since you have been sitting here?

A. You lawyers have told me.

[fol. 1764] Q. And has that left any impression in your mind whatsoever, one way or the other?

A. As to guilt or innocence?

Q. If I am right, I think you made some sort of excuse at the time you were called for service, did you not?

A. Hay fever.

Q. Have you got that now?

A. No, the season is past.

Q. So that there would be no impediment at this time as to your jury service? Am I correct in that statement?

A. Correct.

Q. Without the necessity of repeating the questions which I addressed to Mr. Carlson, do you know of any reason at all why you could not be fair and impartial? There has been no unfavorable impression gained by you in the course of the discussions as between lawyers, or the statements made by prospective jurymen who were excused?

A. No.

Q. Mr. Gritting, you heard the questions that I addressed to Mr. Carlson also, did you not?

A. I did.

Q. And if I directed those questions to you, would you answer them in the same manner?

A. Yes.

Q. May I ask what papers you read?

A. *Tribune* and the *Sun*, the only papers I read.

Q. Have you read anything at all at any time about this case or about the defendants in this case?

A. No, only headlines that the trial was to start.

Q. You mean merely those headlines that were devoted to the question of the picking of the jury or anything that was in any article in respect to any of the defendants? What do you mean?

[fol. 1765] A. No, I mean picking the jury.

Q. Just the advancement in picking the jury?

A. Yes.

Q. Have you gained any impression one way or the other as to the guilt or innocence of any of the defendants on trial?

A. No.

Q. Has there been any opinion or impression formed in your mind due to statements made by other prospective jurymen while you were seated in the court-room?

A. No.

Q. Your mind is free and open now?

A. Yes.

Q. I don't think I asked either you or Mr. Sifert whether or not you knew anybody attached to the District Attorney's office?

A. No.

Q. Have you ever heard any discussions or discourses on the subject of crime by any Assistant District Attorney?

A. No.

Q. In any club or over the radio?

A. No.

Q. Have you any immediate relations or close friends in the Police Department of the City of New York?

A. My son-in-law has a brother. I have not seen him.

Q. That is no relation. Is he merely a patrolman in the Police Department?

A. He is a detective.

Q. Do you know where he is attached?

A. Poplar Street.

Q. Would you mind telling me what his name is?

A. Edward Norris.

Q. The District Attorney assures me he has no connection with this case, so I won't ask you the question I in-[fol. 1766] tended to ask you, but I will ask you this question: Have you ever discussed police affairs with him?

A. No.

Q. And that is the only one that you now recall having any connection with the Police Department; am I correct?

A. That is all.

Q. Mr. Gritting, do you know anybody attached to any police station?

A. No.

Q. Any police official?

A. No.

Q. And you have no relations?

A. No.

Q. Have you any knowledge of any of the Assistants connected with Judge O'Dwyer's office?

A. No, I have not.

Q. Do you intend to take any active part in the coming political campaign?

A. No, only to vote.

Q. Outside of voting. I mean active part. There you will only pull the lever. Either one of you gentlemen taking an active part?

A. (By No. 12): I am chairman of my Election Board.

Q. That would, of course—

A. Supervisory work.

Q. You, Mr. Sifert?

A. No.

Q. Mr. Cummings, again asking you if I directed the questions to you that I directed to Mr. Carlson, would your answers be the same?

A. They would.

Q. And have you any immediate relations on the police force?

A. No.

Q. Any close friends with the present District Attorney's [fol. 1767] staff?

A. No.

Q. Do you intend to take any active part in the present political campaign?

A. No.

Q. Now, addressing the four of you collectively: Do any one of you know of any reason why you could not be fair and impartial to both The People and the defendants? Do you, mister? You, mister? You, Mr. Sifert?

A. No.

Q. Or you, sir?

A. No.

By Mr. Talley:

Q. I will address you collectively, gentlemen, as far as is possible. The Court will charge you that it is the law of our land that no defendant in a criminal trial may be convicted unless a jury is satisfied—that means each in that jury—is satisfied beyond a reasonable doubt of the guilt

of such defendant. If, after the presentation of all of the evidence in this case there is a reasonable doubt in your mind; that is, a doubt that has some reason on which it can be based, the kind of a doubt that a man might have about the ordinary affairs of life, if there is such a doubt in your mind as to the guilt of these defendants or any of them, will you give these defendants the benefit of that doubt?

A. Yes.

Q. No question in your mind about that? The Court will charge you that the burden of proving a defendant's guilt is always upon The People, always upon the District Attorney. Under our law it is not required, because a man's name [fol. 1768] is put in an indictment charging him with a crime, that he must prove his innocence of the crime. That is not our law, the result of centuries of experience. And the Court will further charge you that because that burden is placed upon the District Attorney there never comes a time when the obligation rests upon the defendant to take the stand in his own behalf. If, for good reason or bad reason, any of these defendants do not take the stand and the Court charges you that you are not to indulge in any unfavorable inference against them, no unfavorable inference against them because of their failure to take the stand, will you follow the direction of the Court in that respect and not hold it against the defendant who does not take the stand? Is that plain to you, and to you, and to you, and to you?

There is nothing in your minds as you sit there which makes you feel that you could not give these defendants a fair trial under our law as it is charged to you by the Court? If there is, this is the time to say it. We both want a fair, impartial jury. That is what we want, taking this time trying to get it. Is there any reason of any description that exists in the minds of you four gentlemen because of any impressions formed, any conversations had, any reading of newspapers or other things that would prevent you from requiring The People to sustain the burden they were undertaking when they brought these people into court to answer this charge?

[fol. 1769] Is there any reason why you cannot require the District Attorney to give these men a fair trial?

A. No.

Q. That applies to all of you? No further questions.

Mr. Barshay: No questions.

Mr. Turkus: Each talesman is satisfactory to The People of the State of New York: Mr. Cummings, Mr. Gritting, Mr. Sifert, and Mr. Carlson.

Mr. Talley: Mr. Cummings is satisfactory to the defense. The other three gentlemen are challenged peremptorily.

(James B. Cummings takes Seat No. 6 in the jury box.)

(The following talesmen were called: Myron Gillespie, of 316 Beverly Road; George B. Hall, of 138 Seeley Street; [fol. 1770] James F. Gill, 266 Washington Avenue; Edna F. Branower, 75 Ocean Avenue, Brooklyn.)

Mr. Turkus: May it please the Court, the counsel on both sides are fully cognizant of the respect that the Court holds for women jurors. They feel the same way themselves. Unfortunately, in this situation we have not the facilities by way of matrons for the proper safeguarding of a woman's rights in the jury room. Since the jury is to be segregated in the hotel, women have the right of protection, the right to have their names protected as well as all other protection. Under the circumstances, where we have not got a single matron, that would be impossible. Under the circumstances, we have heretofore consented to excuse one lady juror, and through some inadvertence I believe all the other lady jurors felt the excuse applied to them.

The Court: I think that was the impression given by the clerk, but the Court had no jurisdiction to act in more than that specific case.

You say both sides consent?

Mr. Rosenthal: Yes, we all agree, because of the conditions.

The Court: The Court can do no more than go along with you, because it is based on good ground.

Mr. Turkus: To safeguard the women from staying here, [fol. 1771] the other prospective lady jurors, may we now have the consent as to all, to save them the bother of returning day after day?

The Court: If it is on consent, yes. Then the Court has jurisdiction.

Mr. Rosenthal: Mrs. Cohen, Mrs. Miller, and Mrs. Mahler.

The Court: I understand these whom you have named are excused by consent?

Mr. Rosenthal: In addition to the one that is in the box, Mrs. Branower.

I am just handed another slip by the clerk, who says one of the ladies appeared today, Mrs. Annie Rothblatt. If that is so, that will be included in the consent.

The Court: Is that all right?

Mr. Turkus: It is. Does that include all the prospective lady jurors?

Mr. Rosenthal: Mrs. Annie Rothblatt of 1652 East 12th Street, No. 2593.

The Court: You understand the position of the Court. The Court had no jurisdiction to act other than in the one case that was before it. You understand that if it appeared on the record that the Court acted in other cases, that might be considered as substantial error in the record.

[fol. 1772] Mr. Turkus: Yes, your Honor, I understand that.

The Court: That had to be avoided. In the next place, it must be clearly understood that there is no prejudice against women jurors. The service of women jurors has been of great benefit in this court.

Mr. Turkus: The only thing we had in mind was the safeguarding of the reputation of the ladies in hotels without the matrons to segregate them.

The Court: This is not the action of the Court; this is the agreement of counsel which the Court simply approves because of the consent.

(The following talesmen were called into the jury box: Robert Kafker, 526 East 54th Street; Philip Strober, 69 Tehama Street; George B. Haaf, 2248 East 47th Street, Brooklyn.)

Mr. Barshay: Judge Taylor, before you address the other jurors, may I call your attention to the fact that one of the gentlemen who entered the box, I have represented his family for a considerable number of years.

The Court: What member of his family?

Mr. Barshay: Once his brother, once his father, in civil litigation.

The Court: He may still be a good juror.

Mr. Barshay: I just want to acquaint your Honor with [fol. 1773] that fact.

Mr. Turkus: We may be able to save some time if we have a substitution. Mr. Barshay is a skilled lawyer, and if he calls something to the attention of the Court—

The Court: I want to know more about it. The other gentlemen may come back at five o'clock.

(Mr. Turkus then examined the talesmen who had entered the box as to their qualifications.)

By Mr. Turkus:

Q. Mr. Gillespie, under the procedure that we are now adopting in order to expedite the selection of the jury, we take one juror and address many questions through him while the other jurors listen to questions, and then we go down and we find out if the responses would be the same. In that way we save time, and you will understand why I address my questions to you.

According to the listing on the board, Mr. Gillespie, you reside at 316 Beverly Road.

A. Yes.

Q. Is that correct?

A. That is right.

Q. Is that the Flatbush section of Brooklyn?

A. Yes, West Flatbush.

Q. And you are listed as "R. E. Insurance." Does that mean real estate and insurance?

A. Yes, sir.

Q. Are you in business for yourself?

A. Employed.

Q. Who is your employer?

A. Harry M. Lewis.

Q. Is his office in the Montague section of Brooklyn?

A. 189.

[fol. 1774] Q. Is he related to Judge Lewis, do you know?

A. Not that I know of.

The Court: He lives on the same street. He lives on Second Street, near Judge Steinbrink.

Q. How long have you been in that business of real estate and insurance?

A. I have been a licensed real estate broker for approximately twenty years and—I mean insurance broker, and a licensed real estate broker for about a year, and prior to that a licensed real estate salesman about four years.

Q. How many years have you been with the Lewis firm?

A. Over nine years.

Q. And prior to that were you with some other concern?

A. Yes, sir.

Q. In Brooklyn?

A. New York, 46th Street.

Q. And by whom were you employed then?

A. Glad & Nichol.

Q. Have you lived in Brooklyn a number of years?

A. On and off about twenty years.

Q. Have you lived in other sections of Brooklyn besides West Flatbush?

A. In the Borough Park section.

Q. And how many years did you live there?

By the Court:

Q. You are very close to Borough Park now?

A. Yes.

Q. You are on Dahill Road?

A. I am near Ocean Parkway. 316 is near Fourth; Ocean Parkway is Sixth. Dahill is the other way.

[fol. 1775] Q. Dahill is west?

A. Dahill is west.

Q. You are near the corner of Fourth?

A. Dahill is past Gravesend Avenue, or McDonald Avenue.

Q. That is right. Church Avenue runs in right there?

A. That is right.

Q. Then Borough Park begins?

A. I do not know.

By Mr. Turkus:

Q. Mr. Gillespie, I take it that you understand that the defendants are charged with the crime of murder in the first degree, do you?

A. Yes, sir.

Q. Is there anything about the nature of the charge, namely, a charge of murder in the first degree, which would impair your service as a jurymen?

A. Not that I know of.

Q. Have you any scruple, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. The lawyers must hear the answers too, and I will understand when you speak up louder. Have you had any business or other connection with anybody in the clothing or garment trades in Manhattan?

A. No, sir.

Q. For example, when you were in the real estate business in Manhattan, did business bring you into contacts with any individuals or firms engaged in the manufacture of clothing?

A. When I was in business in Manhattan it was primarily insurance.

Q. Have you had any business or other connection, or do you presently have one with anyone in the clothing trucking industry?

[fol. 1776] A. No, sir.

Q. With respect to people or firms in the Brownsville-East New York area?

A. Well, management of property, tenants.

Q. Do you specifically supervise the properties in that locality?

A. I go down there and I make inspections of different properties and then I take over other supervisors' properties in connection with collection of rents and preparing leases.

Q. And how often are you in that area or dealing with people who are in the Brownsville-East New York area?

A. During the summertime I am there for about two weeks at a time, or three weeks at a time, and then I won't be there for about a month.

Q. So that your business then brings you into that district intermittently, and by that I mean are you there for a period of time and then you are away for a short period and then you are back again?

A. That is right.

Q. On what streets are those properties that you visit?

A. One is on—Do you want the address?

Q. Tell me the streets.

A. One is on Junius Street.

Q. Is that on the other side of that railroad cut?

A. It is 1 Junius Street, the loft building.

Q. Is that right rear Livonia Avenue?

A. We have one on 901 Livonia Avenue.

Q. I mean the one on Junius Street.

A. No, that is corner East New York.

Q. East New York Avenue?

A. That is right.

[fol. 1777] Q. That would be about a block from Van Sinderen?

A. That is right. We have one, you mentioned Livonia, one at 901.

Q. Would that be near Sackman Street?

A. Where the station is.

Q. Saratoga and Livonia?

A. I go by numbers.

Q. Is there a candy store in it?

A. Shoe store. There is a candy store across the street.

Q. And it is right at the station?

A. It is almost at the station.

Q. And then there is a moving picture?

A. That is it.

Q. That is Saratoga and Livonia all right.

A. We sold that one.

By the Court:

Q. Do you go to that candy and cigar store?

A. No.

Q. Never go there?

A. No reason to.

Q. Do you know Rose Gold?

A. Don't know anyone but the tenants in my building. We did manage a property at 455 New Lots in that particular neighborhood. That was sold I think early in the spring. And on Winthrop Street and Rutland Road.

By Mr. Turkus:

Q. That will be enough. And how many years have you been going into those sections and visiting these properties?

A. Since I work for Lewis.

Q. That has been the past nine years?

A. Call it eight years. I work there nine, over nine.

[fol. 1778] Q. Of course, when you were in that neighborhood, you had conversations with people?

A. Tenants.

Q. Did you hear any discussions about conditions in Brownsville and East New York while you were there?

A. Not that I recall.

Q. Well, in so far as real estate is concerned, you have knowledge of conditions in that section?

A. That is right, and insurance conditions too.

Q. When the O'Dwyer investigation started did you read about it?

A. I believe I did.

Q. And did you read in the press the names of Harry (Pittsburgh Phil) Strauss?

A. Yes, sir.

Q. Martin (Bugsy) Goldstein?

A. That is right.

Q. Abie Reles?

A. That is right.

Q. And various others?

A. Some time ago.

Q. It has been, since 1940, since January 1, 1940?

A. Yes.

Q. You may have heard the names before that?

A. No, I don't think so.

Q. As the result of the knowledge that you have of that area and the reading that you have done, have you any impression?

A. No, sir.

By the Court:

Q. You live near the West Flatbush Democratic Club. Do you belong to it?

A. The West Flatbush Democratic Club, the one you have in mind, on Third Street near Church?
[fol. 1779] Q. Yes.

A. That has been torn down about two years ago. Where they moved to I do not know.

By Mr. Turkus:

Q. What papers do you customarily read, Mr. Gillespie?

A. The *Tribune* and the *Sun* and once in a while the *Telegram*.

By the Court:

Q. There was a lecture given on this subject at that club. You do not belong there?

A. No political party or association or society.

By Mr. Turkus:

Q. In 1936 were you going into those neighborhoods, Brownsville and East New York?

A. Going into those neighborhoods since 1920.

Q. Did you go and visit that place at Junius Street in 1936?

A. '36? No. I think Junius Street, we have that for about three and a half or four years. If I looked the records up——

Q. Do you still maintain a supervision of that property?

A. I have been covering that building about all of January and February of this year and during the summer months. I was back there recently.

Q. Did you read anything in the press about the killing of Joseph Rosen?

A. Yes, sir.

Q. Did you read many articles?

A. No, just that he was murdered, that was about all.
[fol. 1780] Q. Did you read anything of the killing back in 1936?

A. I don't remember.

Q. Is there anything that you remember reading that makes the Junius Street significant to you?

A. Except the locale.

Q. How far is that house—there is a trestle or a passover from Junius Street, from Livonia to Junius Street, and Van Sinderen. There is an I. R. T. and B. M. T. station and a railroad trestle. You can walk over the trestle and come out on Junius Street side. If you walk up one way——

A. Always went by car.

Q. At any rate, is there any significance in your mind about that location of Junius Street from anything that you have heard or read?

A. Only the building we have to manage there.

Q. In your contacts with any people in the buildings that you supervise, did you ever hear mentioned any of the names of persons living in the Brownsville-East New York area or frequenting that area?

A. I don't know. I would say no.

Q. You had one property which is a short distance from the Saratoga and Livonia corner, the one you described to me as having the shoe store near one corner, the moving picture and the candy store?

A. Yes, sir.

Q. Did you hear anything about the candy store?

A. The only thing I ever did is park the car and go across the street.

Q. Did you ever see people hanging around on the corner of that candy store?

A. Sure, a number of times. There is a bus stop there [fol. 1781] too.

Q. May I go along, then, that you have no impression about this case from your knowledge of the real estate conditions in the neighborhood and your visitations there?

A. That is all.

Q. You have no impression at all?

A. None at all.

Q. And nothing from your reading matter?

A. No, sir.

Q. Does business bring you into any contact with the Brooklyn Waterfront?

A. What do you call the waterfront? What I mean by that, the waterfront I know is to be where all the wharfs are.

The Court: Shipping.

The Talesman: Shipping and the only thing we have around, we did have, is a piece of property on Bridge Street and another on—Bridge Street was about the nearest thing to it.

Q. Then other than going to Bridge Street, which was the nearest to the waterfront, may I go along with the understanding you have no contacts, socially or by way of business, with the waterfront?

A. That is right.

Q. Do you know any officials in the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Is there any familiarity to the name of Murray Weinstein, manager of Clothing Cutters Union, Local 4 of the Amalgamated?

A. No.

Q. Or that of Sam or Samuel Katz?

A. Never heard of him.

Q. Is there any familiarity to the name of Bruno Belia?

A. No, sir.

[fol. 1782] Q. Or Salvatore Marazzano?

A. No, sir.

Q. Did you at any time do any insurance work in the area in which the garment center is comprised and the clothing section of the city?

A. No.

Q. Do you have any contacts, directly or indirectly, with any teamsters' unions or clothing trucking unions?

A. The only thing we have in trucking—I don't know what they truck—are garages, that we rent.

Q. I mean your contact, do you personally have contact with any clothing truckers?

A. No.

Q. Do you know any manufacturers of men's or ladies' garments?

A. Yes, sir.

Q. Do you know them personally?

A. No, sir.

Q. Do you know them by way of business?

A. That is it.

Q. And where are their manufacturing places located?

A. One is on 5th Avenue and 16th Street. That is gents' furnishings.

Q. Men's clothing?

A. Yes. And then I know a couple of furriers.

Q. Who is it that you know in the men's clothing?

A. Mr. Weder(?).

Q. Do you know his first name?

A. No, in fact, I think he sold out to his partner, I think the first of the year. They had that Style Pledge Clothes.

Q. Whom do you know in the fur industry?

A. Mr. Lovett.

Q. Do you know the trade name?

[fol. 1783] A. I think he went under—if I recall, now that you ask me, he is under his own name and he is foreman—he went out of business and he is foreman or shop steward in another shop; I don't recall what name.

Q. Do you know other people in the fur industry?

A. Neighbor next door, but I have not anything to do with him.

Q. Is the name of Lepke and Gurrah familiar to you? You never heard of those names?

A. Yes, recently I heard.

Q. In conversations or in reading matter?

A. Some items that I read has connection with the investigation.

Q. Did you hear anybody say anything about Lepke and Gurrah in discussions?

A. Not that I recall, no, sir.

Q. Has any of the reading matter, the names of Lepke and Gurrah, left any impression with you?

A. No impression.

Q. Did you follow the investigations of Thomas E. Dewey in the press?

A. No, sir.

Q. Do you have any contacts in Sea Gate of any kind, nature or description?

A. Yes, we manage some property out in 4001 Neptune Avenue. That is in Sea Gate, and then we have a row of houses on the Bay side. It is called Bayview Avenue, sixteen houses.

Q. And does business bring you into the Gate?

A. The last time I was in the Gate I think was just before they started their season. That was on inspection.

Q. Do you know a lawyer by the name of William W. Kleinman who maintains a residence in Sea Gate?

A. No.

[fol. 1784] Q. Is there any familiarity to the name of Max Silverman, a one-time resident of Sea Gate?

A. No, sir.

Q. Or that of Wolfie Goldis?

A. No, sir.

Q. Do you know anyone by the name of Buchalter?

By the Court:

Q. Where is your office?

A. 189 Montague.

Q. Mr. Kleinman's office is 215.

A. Down the corner.

Q. David Price, do you know him?

A. I heard David Price's name, but I don't know him.

By Mr. Turkus:

Q. The last address of Mr. Kleinman was at 66 Court Street. He was at 215 at one time.

I do not know whether I had a response to the question I put to you about familiarity with the name of Buchalter or Kowas. Are those names at all familiar to you?

A. Buchalter is familiar outside of hearing it recently; the other one, no.

Q. And when you say you have heard the name Buchalter, you mean you have heard it in court or you have read of it?

A. That is right.

Q. Is there any familiarity to the names of Bellanca or Tosca?

A. Never heard of them.

Q. Or Hymie (Curley) Holtz?

A. Never heard of him.

Q. The name of William or Willie Alberts, a bondsman—a one-time bondsman, I should say.

A. No, sir.

Q. Do you know anybody by the name of Weiss in the [fol. 1785] automobile rental business, or Chevrolet sales agency business?

A. No, sir.

Q. Since you received your notice did anybody speak to you about the case?

A. No, sir.

Q. There are lawyers representing the defendants here. There are nine lawyers in all. I will say the names now, so that all the other jurors can hear them, and then when I inquire about any knowledge of counsel, they will be in a position to answer. When I say "nine", please understand that I have no fault to find with it. Defendants may have as many lawyers as they want or as few as they want, so there is nothing said there to find fault with defendants for having them.

With respect to defendant Buchalter, he is represented by former Assistant District Attorney Hyman Barshay, former Assistant United States Attorney Abraham Wegman, and Mr. Jesse Climenko, a partner of Mr. Wegman. Do you know any of those three lawyers?

A. No, sir.

Q. Or anybody in their law offices?

A. No, sir.

Q. With respect to the defendant Weiss, he is represented by former General Sessions Judge Talley, former Assistant District Attorney James I. Cuff, and former Assistant

United States Attorney Murray Kriendler. Do you know any of those three lawyers?

A. No, sir.

Q. Or anyone associated with them in the practice of law?

A. I do not know who they employ, so I cannot tell you.

Q. That is what I want to know. Do you know any of [fol. 1786] the three lawyers who represent the defendant Capone? They are Mr. Sidney Rosenthal, Mr. Leon Fischbein, and Mr. Emanuel Rosenberg.

A. No, sir.

Q. Do you know whether you consciously know anyone associated with those three lawyers in the practice of law?

A. No.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. No, sir.

Q. Does your business bring you into contact with members of the bar?

A. Oh, yes.

Q. Are those contacts limited to so-called real estate lawyers?

A. No, not only real estate. Some in the general practice of law, negligence cases.

Q. Did you have any discussions with any members of the bar about any of the defendants in this case or about Judge O'Dwyer's investigation?

A. No, sir.

Q. Did you ever hear any discussions take place?

A. No.

Q. Do you know the District Attorney of the county, Judge O'Dwyer, personally?

A. No, sir.

Q. Do you know any Assistant District Attorney on his staff?

A. Personally?

Q. Yes.

A. No, sir.

Q. Of course, when you hesitated, you have me curious. Do you know one of the Assistants?

A. No. I tell you what I have in mind, well, in our office we did have something go wrong, and of course, as secretary of the company I went to the District Attorney and

[fol. 1787] made a charge. Now I am trying to think of his name.

Q. Would it be Mr. Rapel?

A. Got a Ryan there?

Q. You mean Miles McDonald? I am trying to get as near to Ryan as you can. Could it have been Mr. Riley?

A. A young fellow.

Q. Yes.

A. That may be.

Q. I take it that whatever contact you have had with the District Attorney's office has left your state of mind such that you could not be a fair juror in this case.

A. That was purely business.

Q. Have you been the complainant in a criminal case?

A. That is it.

Q. And is that case ended?

A. No, sir.

Q. Still pending?

A. Yes, sir.

Q. Awaiting trial?

A. Well, yesterday I got a call from the probation officer.

Q. That case is ended then.

A. He has not been sentenced yet.

Q. If you got a call from the probation officer he must have entered a plea of guilty.

A. You are telling me; I do not know.

Q. That is what I suspect from that. However, is there anything about the connection that you have had with the District Attorney's office that would impair your ability to serve in this case?

A. We did have one more. That Bridge Street property [fol. 1788] about two years ago, the police gave us quite a bit of trouble. They found a body in the rear building which they attributed to, so they told me, to Murder, Incorporated.

Q. They were trying to solve the case?

A. They gave us trouble. They may be trying to solve the case, but the trouble I mean is the violations they had put on the building.

Q. Well, from your contact, as you have just mentioned it, and I won't repeat the phrase you used, do you have some impression about the O'Dwyer investigation in that connection, with the expression that you used?

A. No, all I know there has been an investigation, but I never followed it up.

Q. Not even the one where that body was found?

A. That is not the only one. About seven years ago Mrs. Diamond was found in one of our buildings.

Q. Which Diamond?

A. Legs Diamond's wife. That was at 1641 Ocean.

Q. These bodies have been found in the properties that you manage?

A. Yes.

Q. I take it that whatever zeal was used by the Police Department in reference to the particular bodies that were found in these properties that you have some control over by way of management, has not prejudiced you against the Police Department of the City of New York or the prosecutor's office, has it?

A. No.

Q. By the same token, is there some prejudice that you may have with people charged with crime because of those experiences?

A. No.

[fol. 1789] Q. Have you heretofore served as a juror in a criminal case?

A. I was called, but never served.

Q. Did you get as far as the jury box?

A. No, sir.

Q. Your name was not pulled out of the wheel?

A. Not, fortunately.

Q. I take it then you have never heard a judge's charge on the law in a criminal case?

A. Not in a criminal case.

Q. Should the Judge charge you in substance in a criminal case that the burden of proof rests entirely upon the prosecution to establish guilt beyond a reasonable doubt, will you accept that definition and instruction of law?

A. Yes, sir.

Q. And will you conscientiously endeavor to apply it to the facts in this case?

A. Yes, sir.

Q. Do you live close to a man by the name of Gottesman?

A. We had a Gottesman for a tenant at 330 Ocean Parkway.

Q. Do you know anyone else by the name of Gottesman?

A. Coney Island Avenue—a gas station.

Q. I was referring to a lawyer.

A. No.

Q. I won't reiterate the expression, if the Judge should charge you thus and so, but in my questions you will understand that when I ply them to you it is with the understanding that the Court will substantially direct you that that is the law in the case. For example, do you find any quarrel or do you find any fault with the proposition of law that defendants on trial are presumed to be innocent until their guilt is established beyond a reasonable doubt?

[fol. 1790] A. I understand that.

Q. And will you accord that presumption to the defendants in this case?

A. Yes, sir.

Q. In consonance with the Judge's charge, will you give to the defendants on trial every legal and constitutional safeguard that a defendant should and must have under our law?

A. Yes, sir.

Q. Have you heard any discussion while you were waiting to be called into the jury box about the testimony of an accomplice?

A. Yes, sir.

Q. Are you, then, familiar with what an accomplice is?

A. Yes, sir.

Q. Is it your understanding substantially that an accomplice is one who participated in the commission of crime together with others?

A. That is right.

Q. Do you have any inherent prejudice or bias against an accomplice as would cause you to reject his testimony no matter what the circumstances were?

A. Will you repeat that?

Q. If it is complicated, I will do it over.

A. Not complicated.

Q. (Pending question read.)

A. That is hard for me to answer.

Q. I will try to bring it out so that we can get along. Assuming that part of the State's case rests upon the testimony of an accomplice, that is one who participated in the

commission of the murder with others. Do you follow me on that?

A. Yes.

[fol. 1791] Q. Is your state of mind such that you would reject testimony coming from an accomplice, no matter what the circumstances were? Have you such a feeling against an accomplice?

A. It would be what the testimony shows up. In other words, if the testimony is of that nature that is acceptable.

Q. What I want to know is this: Would you close your ears to the testimony of an individual who was in the category of an accomplice?

A. No.

Q. Because of some bias or prejudice that you may have?

A. No.

Q. Against those individuals. Do you find any fault with the prosecutor of the county who, in order to solve a murder case, will accept the testimony of one of the co-participants in the crime and use it against the others?

A. No, sir.

Q. Do you find any fault with the prosecution of an indictment wherein the testimony of an accomplice is used against the other defendants in the case?

A. No.

Q. There will be certain rules or certain tests that you can apply to the believability of an accomplice. Do you understand that?

A. Yes.

Q. They will undoubtedly be given to you by the trial judge in his charge to the jury.

A. Yes.

Q. I take it that you understand that in the ordinary case an accomplice is not usually a theological student.

Mr. Climenko: I object to the question, if your Honor [fol. 1792] pleases.

The Court: Yes.

Mr. Turkus: Withdrawn in that form.

Q. I take it that you understand, Mr. Gillespie, that the accomplices sometimes are the kind of individuals that we don't ordinarily meet with in our daily experiences and every-day walk of life.

A. Yes, sir.

Q. Should the Judge charge you that no prosecution may result in a verdict of guilty if it rests only on the testimony of an accomplice, would you follow that instruction of law?

A. Yes, sir.

Q. And should the Judge charge you that where part of the State's case rests upon the testimony of an accomplice, the testimony of the accomplice must be supported or corroborated, is that clear?

A. I understand perfectly.

Q. And that the supporting evidence, to be deemed sufficient by the jury, must be believable. Do you follow me?

A. Yes.

Q. And it must tend to connect the defendants with the commission of the crime. Will you follow that instruction of law?

A. Yes, sir.

Q. Should the Judge tell you that the testimony of an accomplice need not be corroborated in its every detail, would you follow that instruction of law?

Mr. Climenko: I object to the form of the question and [fol. 1793] its substance, if your Honor pleases.

By the Court:

Q. Supposing the Judge charges you that the corroboration need only be such as tends to connect the defendant with the commission of the crime, will you follow that instruction?

A. Yes, sir.

Q. As to the extent of the corroboration required?

A. That is right.

By Mr. Turkus:

Q. Something has been said here by one of the lawyers to the other prospective jurors, and properly so, that they are here to meet only one charge, the guilt or innocence of the defendants on this murder charge. Is that clear to you?

A. Yes.

Q. That is your understanding, isn't it?

A. That is right.

Q. And is it your understanding, too, that the only obligation or the only burden upon the prosecutor, by the same token, is to establish guilt of the commission of this crime, the murder of Joseph Rosen?

Mr. Climenko: If your Honor pleases, I object to the form of the question.

The Court: Overruled.

Mr. Climenko: Exception.

A. Yes.

Q. There may be many tests that you can apply to the believability of an accomplice. Do you follow me on that?

A. Yes, sir.

[fol. 1794] Q. For example, it may be discussed with you by the defense lawyers that you should look at the past criminal record of the accomplice; that is, the crimes that he has committed in the past, the criminals that he has associated himself with in the past, and every vicious and immoral act that he may have committed throughout his lifetime; is that clear?

A. Yes, sir.

Q. Will you look at those things when you weigh the believability of an accomplice?

A. Yes, sir.

Q. And will you, if the Judge tells you to, look and view the testimony of an accomplice with care and with caution; will you do that?

A. Yes, sir.

Q. And will you, if he tells you, even look at it with suspicion, do that?

A. Right.

Q. And will you devote your mental faculties and all the tests that you apply in the case to the accomplice witnesses or, as a matter of fact, to any witness, to see whether that witness is telling the truth; is that right?

A. Yes, sir.

Q. In other words, is your state of mind such that even a bad man can tell the truth?

A. Yes.

Q. Even a man who has committed crime and had vicious and immoral acts and many other things in his past life, can sometimes tell the truth, isn't that your state of mind?

A. That is right.

Q. And so will you devote yourself to find out, is he telling the truth, the accomplice, is he telling the truth when he [fol. 1795] comes into this court-room and speaks of the group participation of these three defendants and himself in the killing of the victim named in the indictment?

A. Yes, sir.

Q. And will you devote all your mental faculties and energies to find out is this accomplice telling the truth about the manner in which they all combined and the part which they all played in the murder of the victim? Will you do that?

A. Yes, sir.

Q. It may be that you may not like an accomplice, you may look at him and you may not like him—if you do not like him, nobody will find any fault with you. Nevertheless, will you look to find out from all the evidence in the case, is this person telling the truth?

A. Yes, sir.

Q. Even if you do not like the accomplice, even, as a matter of fact, if you detest him, if you are satisfied he is telling the truth about the group participation of these defendants and himself in the commission of the murder, and you are satisfied of that beyond a reasonable doubt, will you say so in your verdict?

A. Yes, sir.

Q. For example, is your state of mind such—to cut it short—that no matter how you dislike or no matter how you may detest an accomplice, if you believe him, he has told the truth about the participation of this group in the murder, and from the other supporting evidence you are satisfied beyond a reasonable doubt that the three defendants played the parts that they were supposed to have played according [fol. 1796] to the testimony of the accomplice, and you are satisfied beyond a reasonable doubt that they are guilty, is your state of mind such that because you detest or you dislike the accomplice you would permit three guilty men to escape?

A. I understand.

Q. Would you permit three guilty men to escape?

A. No, sir.

Q. Or would you permit three guilty men to escape if the District Attorney cannot convict everybody who was part and parcel of the murder?

Mr. Barshay: I object to that.

Q. If you are satisfied beyond a reasonable doubt that the three defendants are guilty.

Mr. Barshay: If your Honor pleases——

The Court: It is an ambiguous question.

Mr. Barshay: May the D. A. refrain from the use of the word "escape."

The Court: Yes. It is much simpler to ask the juror if he would convict if he were satisfied beyond a reasonable doubt.

Q. I think I got to the point where you agree with me that you have no prejudice against a prosecution which uses the testimony of an accomplice in order to solve the case. Remember that?

A. That is right.

Q. And that you understand that an accomplice is one who is equally guilty, that he is a co-participant in the crime and he is guilty of the crime?

A. That is right.

[fol. 1797] Q. Assuming that the prosecution here satisfied you beyond a reasonable doubt that the three defendants are guilty of the crime, and assuming further that because of the use of the accomplice testimony we cannot convict the accomplice too, would you be inclined to relax or deviate from a proper verdict in this case because we cannot convict the accomplice?

Mr. Barshay: Your Honor, I object to that. That is an absolute misstatement of the law.

The Court: Sustained.

By the Court:

Q. Do you belong to the Brooklyn Club?

A. I don't belong to any club or association.

Q. Do you belong to Beth Emet?

A. No, no clubs at all.

By Mr. Turkus:

Q. Is your state of mind such that you would acquit three men who you are satisfied beyond a reasonable doubt are guilty of the crime charged, solely because you were unable to convict the accomplice?

Mr. Cuff: I object to that.

Mr. Barshay: I object to that. We cannot convict the accomplice because he is not a defendant here, and that is a superfluous question.

The Court: I think it is confusing. Sustained.

Q. Bearing in mind that there can be no conviction upon the unsupported or uncorroborated testimony of an accomplice—[fol. 1798] is that clear to you so far?

A. Yes.

Q. Would your state of mind be such that solely because lawyers should argue that everybody in the case is an accomplice, that you would be inclined to follow that, or would you use your own judgment and find out who is an accomplice in the case?

Mr. Cuff: If your Honor pleases, I object on the ground that the subject has been fully covered in its previous question and we are going to wear out everybody if we just harp on this one thing.

By the Court:

Q. Will you figure that out and be guided by the charge of the Court?

A. Yes, sir.

By Mr. Turkus:

Q. Something has been said by one of the lawyers for the defendant Buchalter that his client has been heretofore convicted of crimes and has been sentenced for the convictions and is serving a long jail term. Would you, because that defendant is presently incarcerated, relax or deviate from a proper determination in this case?

A. No, sir.

Q. Will you decide the guilt or innocence of the defendant Buchalter and every defendant in this case upon the evidence adduced in the court-room in connection with this indictment?

A. Yes, sir.

Q. Will you, sir, if selected as a juror in the case, devote yourself to find out are these three men, Buchalter, Capone, [fol. 1799] and Weiss, guilty of murder in the first degree, or are they innocent?

A. Yes, sir.

Q. Will you, if selected as a juror, talk the case over with the other jurymen?

A. Yes, sir.

Q. Reasonably and sensibly?

A. Yes, sir.

Q. Listen to fair argument and discussion?

A. Yes, sir.

Q. If the prosecution satisfies you beyond a reasonable doubt that these defendants and each of them are guilty of murder in the first degree, will you say that by your verdict?

A. Yes, sir.

Q. Is there anything in your past life or your present connections that would prohibit or prevent you from saying so fearlessly and courageously?

A. Not that I know of.

Q. And without any hesitation?

A. Yes, sir.

Q. Is there anything which I have failed to elicit by questioning which goes to your qualification to be a fair and just juror? Is there anything which I failed to bring out by questions which goes to your ability to be a fair and just juror in the case?

A. Not that I know of.

Q. And will you, if selected as a juror, endeavor by your verdict to do justice in this case?

A. Yes, sir.

Q. Mr. Hall, you live at 138 Seeley Street?

A. Yes.

Q. The reason I say that is once we had a wrong address.

A. 138.

Q. That is commonly known as Windsor Terrace, isn't it?
[fol. 1800] A. That is it.

By the Court:

Q. Calderville?

A. It is both, your Honor.

By Mr. Turkus:

Q. Have you lived in Windsor Terrace for a number of years?

A. All my life, Park Slope section.

Q. And your business is listed as that of a credit manager.

A. Credit man.

Q. And by whom are you employed?

A. R. H. Macy & Company.

Q. So your job is to check credits for the concern by which you are employed?

A. The instalment accounts.

Q. How long have you been with Macy?

A. About six years.

Q. I take it you have heard the questions that I have put to Mr. Gillespie about the garment industry, the clothing industry, clothing truckers, the unions connected with those industries and operating in those areas?

A. Yes.

Q. Was there anything familiar to you about any of the names of union officials? Do you know any manufacturers; do you have any contacts of any kind, nature, or description in the industry or in those areas?

A. No, sir.

Q. Does that hold good with respect to Brownsville-East New York?

A. Yes.

Q. And the Brooklyn waterfront? Since you received your notice, Mr. Hall, did anybody speak to you about the case?

A. No, outside of just a chance remark.

[fol. 1801] Q. Was that in connection with the possibility that you may be inveigled into the jury box as a juror and have to serve?

A. Just that I have been on my way to court, just a chance remark.

Q. There has been no discussion in which you participated as to the guilt or innocence of the defendants?

A. No.

Q. Are you in sympathy with the enforcement of the penal law of the State of New York?

A. Yes, I am.

Q. I mentioned the names of the counsel in the case. Do you know any of those lawyers who represent the defendants?

A. No.

Q. Or anyone connected with them in the practice of law?

A. No, I do not.

Q. Or any member of the bar who specializes in the defense of criminal cases?

A. No, sir, I do not.

Q. Do you know Judge O'Dwyer, the District Attorney of the county, or any Assistant District Attorney on his staff?

A. No, I don't.

Q. Did you hear me discuss with Mr. Gillespie that defendants in a criminal case have certain rights and safeguards that goes to every defendant who is charged with the commission of crime in the State of New York, be he rich or poor, be he weak or strong, no matter who he is, he comes in here with certain rights that the Court and the jury gives him in every charge of crime. Do you understand that?

A. I do.

Q. And will you take the definition of what those legal rights are exclusively from Judge Taylor?

A. I will.

[fol. 1802] Q. And not from anybody else in the courtroom, but take them from the Judge in his charge to the jury?

A. Right.

Q. And will you in this case give to the defendants every one of those legal rights and safeguards that the law says they shall have?

A. Yes, sir.

Q. Did you hear me talk over with Mr. Gillespie about accomplice testimony?

A. Yes, I did.

Q. Do you have any different views on accomplice testimony than he had? Is your view any different than the views he expressed?

A. That would be rather difficult to answer. There was quite a series of questions.

Q. That is right. Were there some that you disagree with?

A. No, generally speaking I agree with the answers that Mr. Gillespie had.

Q. I will make it very brief with you. I take it that you have no inherent bias or prejudice against testimony which emanates from an accomplice as would cause you to shut your ears to whatever he says? You have no such prejudice as would cause you to throw out, no matter what he said?

A. No, I have not.

Q. If selected as a juror in the case, you will use all your intelligence to find out is that accomplice telling the truth about the part that each of these three defendants played in the murder together with him? Is that what you will do?

A. Yes.

Q. And in all the tests that we have, whether a man has a [fol. 1803] motive to talk, whether he even has a grudge

against somebody, or whether he got immunity, or no matter what he got or no matter who he is or no matter what he is, will you uppermost in your mind keep fresh in your mind that your job is to find out not whether you like or dislike the accomplice, but is he telling the truth about this murder charge and about the participation of these defendants with him in the commission of that crime?

Mr. Climenko: I object to the form of the question, if your Honor pleases.

The Court: Overruled.

Mr. Climenko: Exception.

Q. Did you follow me?

A. It was a long question, but I would cooperate with the Judge's charge in so far as it applied to any witness.

By the Court:

Q. Will you try to decide fairly whether or not the accomplice is telling the truth, taking into consideration in so doing the bad elements of his character?

A. Yes, your Honor, I would.

Q. And, of course, viewing his testimony with suspicion and accepting it, if at all, with caution? Will that be your attitude?

A. I would weigh the testimony of every witness, your Honor.

Q. For what it is worth, the quality and character and [fol. 1804] everything else.

By Mr. Turkus:

Q. If the Judge should charge you that you view the testimony of an accomplice with care and caution will you apply that test to the witness in this case?

A. Yes.

Q. May I go along, then, with the understanding that you have no bias against the prosecutor of the county nor against the prosecution of an indictment which accepts or avails itself of the use of accomplice testimony?

A. I have not.

Q. And that it will be your job to find out is this accomplice telling the truth?

Mr. Cuff: I object to that, if your Honor please, as already asked and answered.

Mr. Turkus: I have not even finished.

The Court: Finish.

Mr. Turkus: I will withdraw it.

By the Court:

Q. What is your business?

A. I work for R. H. Macy, your Honor.

Q. What department?

A. In the credit department.

Q. Accountant?

A. No, I have charge of collecting the accounts.

Q. With Macy that is a new job?

A. It is, your Honor.

By Mr. Turkus:

Q. Something has been said by one of the attorneys for [fol. 1805] defendant Capone, and properly so, that he and the other defendants are here to meet only one charge, the charge in this indictment, and is that your state of mind, that that is what they are here for, to meet this single charge in the indictment?

A. Yes.

Q. Should the Judge charge you that the burden is upon the District Attorney to establish guilt beyond a reasonable doubt, will you endeavor conscientiously to apply that rule of law to the facts in this case?

A. Yes, I will.

Q. And will you apply your mental faculties to see whether the District Attorney has established guilt beyond a reasonable doubt on this charge and only this charge?

A. Yes, I will.

Q. And you understand that that is the only obligation of the District Attorney?

A. Yes, I do.

Q. If selected as a juror, will you listen to fair argument?

A. Yes, sir.

Q. Talk the case over with common sense and understanding?

A. I will.

Q. Even though there will be people the like of which you have not seen in every-day business, will you use common sense and understanding to find out if they are telling the truth?

A. Yes.

Q. Will you, by your verdict, endeavor to do justice in the case?

A. I will.

Q. Is there any reason why, if the prosecution satisfies [fol. 1806] your mind beyond a reasonable doubt that these three men are guilty of murder in the first degree, that you cannot say so?

A. No.

Q. And will you say so without any fear, and will you say so courageously?

A. I will.

Q. Mr. Gill, you have a namesake on the jury, and I understand that you are not related.

A. Not so far as I know—way back, perhaps, in the family tree.

Q. You live at Washington Avenue? Is that the Hill section?

A. Hill section.

Q. Have you lived there for a number of years?

A. About twelve.

Q. Prior to that time did you live in Brooklyn?

A. Massachusetts.

Q. Have you lived in the Hill section for the years that you have spent in Brooklyn?

A. The entire twelve, yes.

Q. And your business is listed as that of assistant secretary?

A. Yes.

Q. What is the name of the concern?

A. I am with the Manufacturers Trust Company.

Q. You are assistant secretary to some official of the bank?

A. No, among other officers in the bank are assistant secretaries. I guess we have twenty or thirty of them. They are not administrative officers. My work is largely personal for the chief. He has many interests.

[fol. 1807] Q. And how many years have you been with the Manufacturers Trust?

A. Eight.

Q. I don't suppose you have had any contacts with the garment needle trades, clothing industry, clothing truckers?

A. On trucking, for your information, my chief is a member of the board of directors and also a member of the executive committee of the United States Trucking Corporation.

Q. What I referred to was clothing truckers, men who truck finished clothes and unfinished clothes. It is a particular branch of the trucking industry that I know that the U. S. Trucking does not do. So that none of the names of union officials would mean anything to you?

A. Not a thing.

Q. And I take it that none of the other names that I mentioned have in any wise come in contact with you through business or any other way?

A. The attorneys here? No, I never heard of them until I came to this—

Q. And the names of others that I have mentioned?

A. All foreign to me.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. No.

Q. I take it, sir, that you are in sympathy with the enforcement of the penal law?

A. I am.

Q. It has been brought out by one of the lawyers for Buchalter that his client was previously convicted of crimes, that is, he was found guilty of these crimes and sentenced to [fol. 1808] jail and is presently serving a jail sentence for those offenses.

Mr. Barshay: Not found guilty on both; pleaded guilty.

Mr. Turkus: Same thing.

Q. He was found guilty either on his plea of guilty or the finding of a jury. Whatever the situation is, he is serving, as was pointed out by one of his lawyers, a long term in jail for these crimes that he has committed. Now, would you be inclined to relax or deviate from a proper determination of this charge because he is in jail for some other offenses?

A. No.

Q. You will decide his guilt or innocence of the murder charge on the evidence that you hear in the court?

A. That is correct.

Q. Something has been said by another lawyer, and I discussed it with the other prospective jurors, that his client is here only to meet the charge in the indictment.

A. Yes.

Q. And, by the same token, that it is the obligation of the prosecutor to establish guilt beyond a reasonable doubt only on the charge in this indictment, nothing else?

A. That is clear.

Q. Now, with respect to accomplices, is your state of mind substantially as that of Mr. Gillespie and Mr. Hall?

A. It is.

Q. So that, if selected as a juror, you will apply your mental faculties to find out is this accomplice telling the [fol. 1809] truth about the guilty participation of the three defendants and himself in the commission of this crime?

A. That is correct.

Q. And that in looking at all the tests, whether they extend to motive, whether they extend to even vengeance, or no matter what they extend to, that in weighing all of the probabilities of the case you will have in your mind uppermost to find out is what the accomplice telling in this courtroom the truth about these defendants and their connection with the Rosen murder?

A. That is correct.

Q. So that I can go along, may I not, with the understanding that you have no bias or prejudice against the prosecutor for solving a murder by accepting the use of accomplice testimony?

A. None.

Q. And I take it, then, that your state of mind is such that you feel that even a bad man can, on occasion, tell the truth; it is possible?

A. Yes.

Q. That you will accept the Judge's charge on the law with respect to an accomplice, you will look at his testimony with care and with caution, even with suspicion, if you will. Will you follow that instruction?

A. Follow the instruction of the Court.

Q. If selected as a juror in the case, will you endeavor by your verdict to do justice in this case?

A. I will.

Q. And if The People of the State of New York establish [fol. 1810] to your satisfaction beyond a reasonable doubt

Capone and Weiss and Buchalter are all guilty of murder in the first degree, will you say that is your verdict?

A. I will.

Q. Without any fear or hesitation?

A. None.

Q. Is there anything concerning which I have failed to bring out by question which would affect your qualifications to do justice in the case?

A. The only thing I thought, we have a branch in Brownsville. I do not even know the manager. We have sixty-four branches, and I am not on the operating end.

Q. If that is the only thing?

A. That is all.

Q. Mr. Hall, I forgot to ask you that question: Is there any reason that I failed to bring out by questions which would prevent you from doing justice in the case?

A. None whatsoever.

Q. Mr. Kafker, at the outset Mr. Barshay indicated, and very frankly—

According to this board the next juror is Robert Kafker. Is that your name?

A. That is right.

Q. Mr. Barshay very frankly told the Court and the prosecutor that there was or possibly is, if I understood him correctly, a relationship of attorney and client in civil matters between members of your family and himself. Is that known to you?

A. Well, I don't recall that, but our firm did employ the firm of Gittelson & Barshay.

Q. Have you personally come in contact with either member of the firm?

A. Gittelson. I have seen Mr. Barshay and talked to him too.

By the Court:

Q. What was that, damage suits?

A. Law suits, your Honor.

Q. For personal injury?

A. No, our firm suits. We sued somebody, or somebody sued us. It is a corporation. I am president of it.

Q. What business?

A. Chemical manufacturers of automobile supplies.

Q. Anti-freeze?

A. Yes, sir, that is one of the items.

Q. Where is it?

A. 37 Preston Court, Brooklyn.

Q. Where is that?

A. That is near 54th Street and Kings Highway. It is a small street.

Q. That is between the Sea Beach and Culver Line?

A. No, it is far away. There is no subways there. The only thing that passes it is the Utica Avenue car.

By Mr. Turkus:

Q. I take it, then, that you have had a close association with Mr. Gittelson or Mr. Barshay or both?

A. Association, yes.

Q. And that in representation of attorney and client you have had the usual friendly relation of a lawyer with his client?

A. Yes.

Q. Would there be embarrassment on your part to serve on a case wherein Mr. Barshay is counsel?

A. No.

[fol. 1812] Q. Would you be embarrassed to render a verdict contrary to his client's interests?

A. Yes.

Q. Don't you think that that might go to your fitness in this case? I do not mean to be offensive or in any wise embarrassing to you, but don't you feel, because of your relationship with Mr. Barshay and his partner, that it would be most embarrassing for you to render a verdict against his client?

A. No. I only had a business relationship with him. It has nothing to do with this. If I thought he was wrong, I would tell him he was wrong; if I thought he was right, I would tell him he was right.

By the Court:

Q. Does that relationship still continue?

A. Well, we have not taken Mr. Barshay for a number of years.

Q. You did not visit one another?

A. No, sir.

Q. Did not introduce members of your family?

Mr. Barshay: I knew members of his family long before I knew him. He was handled by my partner, sir. I never handled his matters.

Q. Is that place near Bay Parkway?

A. No, that is ten miles away, East 54th Street.

Mr. Turkus: Mr. Barshay has been very frank, and I certainly don't want to embarrass him.

Q. You live out near Brownsville, East Flatbush?

A. Yes, it is near East Flatbush section.

[fol. 1813] Q. In the neighborhood of Utica Avenue?

A. That is right.

Q. And these automobile chemicals are made up in your own home?

A. We have a three-story factory; we employ seventy men.

Q. The same place where you live?

A. No, this is a factory.

Q. It says here 526 East 54th.

A. I am about ten streets away. That street runs a certain way, and it just happens to cut into that.

By Mr. Turkus:

Q. Is that factory of yours, Mr. Kafker, on the fringe of Brownsville-East New York?

A. I believe it is, yes.

Q. And you say you employ seventy men?

A. Around that.

Q. Are there employees who live in that area?

A. There may be.

Q. Are you the boss, or one of the bosses?

A. I am one of the bosses.

Q. Is it a closed corporation? By that, is it composed of your family?

A. No, members of my family, but there is really two partners, fifty-fifty.

Q. I certainly don't want to be embarrassing or offensive in any wise to Mr. Barshay, but is there anything that has occurred between your relationship that would incline you to go against him for any reason?

A. No.

[fol. 1814] Q. Your relationship is cordial?

A. That is right, sir.

Q. And I can go along then, with the frank understanding that because he has been your lawyer in the past, it will have no bearing on the determination of this case?

A. Yes, sir.

Q. I think Judge Taylor asked you if he is presently representing your concern.

A. He has not for about two years or three years.

Q. Do you know whether he is presently representing members of your family?

A. I don't believe so. In fact, I never knew him to represent anybody in my family. I may have heard years ago.

Q. Or his firm?

A. I don't remember.

Q. East 54th Street, I think the Judge brought out, is somewhere near Utica Avenue, isn't it?

A. That is right.

Q. What would be the other streets near there?

A. Kings Highway, Foster Avenue.

Q. That is right on the fringe of Brownsville, too, isn't it?

A. It is quite some distance from Brownsville.

Q. Brownsville-East New York?

A. It is about two miles, to be exact.

Q. Have you lived in that neighborhood for a number of years?

A. Yes, I have.

Q. Your factory is closer to the Brownsville-East New York area?

A. No, my home is closer.

Q. Have you distribution points?

A. Yes, sure.

[fol. 1815] Q. Somewhere else, in other sections of the city?

A. We distribute throughout the entire world, to be exact.

Q. Do you have distribution in Brownsville-East New York area?

A. Yes, we have.

Q. Through the waterfront, any distribution?

A. I believe we have, yes, sir.

Q. Contact with truckers in the distribution of merchandise?

A. We may.

Q. Are you familiar with the restaurants known as the Famous and Dubrow's Restaurants?

A. Yes.

Q. Have you been in those places occasionally?

A. Yes.

Q. Do you know where Saratoga and Livonia Avenue is?

A. Yes, I do.

Q. And do you know the railroad cut down an the Van Sinderen and Livonia, the I. R. T.?

A. I have seen it.

Q. And the trestle across?

A. I have seen it.

Q. Are you familiar with Livonia and Sackman Streets?

A. Yes.

Q. And Sutter Avenue?

A. Yes. I lived on Snediker Avenue four years ago.

Q. Snediker near where?

A. Dumont.

Q. Snediker and Dumont is pretty close to that railroad cut, that I. R. T.-B. M. T. and the railroad bridge over Junius Street?

A. About ten or fifteen blocks.

Q. How long did you live in Brownsville?

[fol. 1816] A. About four years.

Q. How long ago is that?

A. That was about four years ago.

Q. Of course, the names of Abie Reles and Martin (Buggsy) Goldstein, Pittsburgh Strauss, are familiar to you?

A. I have heard of them.

The Court: Strauss lived on one of those, 53rd Street.

Q. The name of Harry (Happy) Maione?

A. No.

Q. Da: her Abbandando, Vito Guarino?

A. No.

Q. Living in that area, did you ever visit the candy store at Saratoga and Livonia?

A. That was far away. I have never been there.

Q. You heard the name of the proprietor mentioned, I think, by the Judge?

A. Yes, I did.

Q. Is that name familiar to you?

A. No, sir.

Q. By hearsay or by reading?

A. No, sir.

Q. Are you familiar, by reading or by hearsay, about the persons who hung around or congregated on that corner of Saratoga and Livonia?

A. No, sir.

Q. When you lived in that area—I think you said four years ago, is that right?

A. About four years ago.

By the Court:

Q. Is your business done by selling to service stations?

A. We sell mostly to jobbers, but we do have service stations.

Q. Did you sell to the Sunrise Garage?

A. I could not recall.

Q. Atlantic Avenue near Eastern Parkway?

[fol. 1817] A. I do not recall. I don't believe we did.

By Mr. Turkus:

Q. Are you married, Mr. Kafker?

A. Yes, I am.

Q. Have you children?

A. Yes, I have.

Q. How many years ago did you move out of Brownsville, four years ago?

A. Four years ago. It will be five years.

Q. You moved out in 1936?

A. Yes, sir.

Q. I suppose you moved when your lease was up? That would be September 30th?

A. No, I just moved; I lived on an open agreement.

Q. Do you remember whether you moved around the renting season?

A. No, I do not.

Q. Do you remember whether you lived in Brownsville when the Resen murder occurred? It happened September 13th, on a Sunday, 1936.

A. I don't remember it at all.

Q. Do you remember reading of it?

A. I might have, but I don't remember now.

Q. After having lived in Brownsville for four years, and the O'Dwyer investigation started and mention was made of various names, did you read of the investigation?

A. I might have read about it, but I have no recollection of it at all.

Q. You have no recollection of any reading at all?

A. I say I may have read about it, but I don't recall it at this time.

Q. The familiarity with the names of Abie Reles and [fol. 1818] Martin (Buggsy) Goldstein and Harry (Pittsburgh Phil) Strauss, did they come to you from having lived in Brownsville?

A. Well, sitting here and the names were called, I remember reading about them.

Q. Do you remember hearing about them in Brownsville?

A. Never heard about them. Tell you the truth, we never used to stay around there at all.

Q. I know that, but didn't you, in Dubrow's and in the Famous hear those names?

A. I go with my family.

Q. Of course, you have contact with neighbors and others who live in the Brownsville-East New York section?

A. Yes, I have.

Q. What I am trying to find out, while you were living there for these four years, didn't you hear those names mentioned?

A. I said before I might have heard them. That is how I recall the names now, when you ask me about them.

Q. Is your state of mind such that because you have lived in Brownsville and you have heard of these names being mentioned and read of the names in the O'Dwyer investigation, that you have an impression formed?

A. No, I have not.

Q. At nights, do you spend time in the Brownsville-East New York area of Brooklyn?

A. I might have, yes, sir.

Q. I mean in the four years that you lived there, you spend evenings in that neighborhood?

A. Yes.

Q. You were familiar with conditions there more or less? [fol. 1819] Mr. Rosenthal: I object to that, if the Court please.

Mr. Turkus: I am going to challenge on implied bias, on the ground of his having been represented by one of the lawyers.

The Court: Try it.

Robert Kafker, residing at 526 East 54th Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Turkus:

Q. Mr. Kafker, when you were seated in Seat No. 10 I asked certain questions of you and you made certain responses. Do you recall that?

A. Yes, sir.

Q. And specifically the response that you made to the questions concerning the relationship of yourself and your firm with the law firm of Barshay & Gittelson. Do you recall those?

A. Yes, sir.

Q. And if I were to repeat those, would you make the same answers?

Q. Substantially it is this: That in the past you and the other member of your firm have been represented by the law firm of Barshay & Gittelson?

A. Yes, sir.

Q. In civil suits, in which you or your firm has been either plaintiff or defendant; is that correct?

A. Yes, sir.

Q. And that your relationship with that law firm and with Mr. Barshay is still cordial?

A. Yes, sir.

Q. There has never been any difficulty between you?

A. No, sir.

[fol. 1820] Q. You have no present litigation pending in which the law firm of Barshay and Gittelson are counsel?

A. No, sir.

Q. Is there any reason why, if you have any future litigation, you will not re-employ that law firm?

Mr. Cuff: Object to that.

The Court: Overruled.

A. What was that again?

Q. Is there any reason?

A. No.

By the Court:

Q. Who is your present lawyer?

A. Cohen.

Q. How long have you had them?

A. We have had them for about two years.

Q. Then I assume for some reason you became dissatisfied with Mr. Barshay?

A. Not dissatisfied, just change. He was very efficient.

Q. You like the other people better?

A. That is right; sometimes pull certain considerations that you have to take them.

The Court: Is that all?

Mr. Turkus: That is all.

The Court: Challenge overruled.

Mr. Turkus: Peremptory.

By Mr. Turkus:

Q. Mr. Strober, I do not take it that you had any lawyer in the court-room that represented you?

A. No, sir.

[fol. 1821] Q. Tehama Street, where is that?

A. That is just adjacent to the Borough Park section.

Q. That is near Dahill Road?

A. Yes.

Q. It is off Fort Hamilton Parkway?

A. Yes.

Q. Have you lived in that district for a number of years?

A. Nine or ten.

Q. Before that did you live in some other district?

A. Yes.

Q. Where?

A. Borough Park.

Q. Somewhere in the 40's.

A. I lived at 43rd Street between 16th and 15th, and then on 17th and 50th and on 52nd between—

Q. When you lived in Borough Park did you know any family by the name of Feinstein?

A. I did.

Q. Did you know about Irving Feinstein?

A. I did.

Q. Was he a friend of mine?

A. No, he was not a friend of mine, but they lived on 47th when I lived on 43rd, and I had a speaking acquaintanceship with his brother.

Q. Is there any impression that is left in your mind as a result of your knowledge of the Feinstein family that would be prejudicial to these defendants?

A. No.

Q. Do you have any contacts of any kind, nature, or description in that Brownsville-East New York area?

A. We have some customers. We do business in that section.

Q. Would those be stores, merchants, or are they private persons?

A. Those are stores; I mean, they are contractors. Their [fol. 1822] type of work takes them outside their stores, but they store their materials and they have offices and business addresses.

Q. I see you are in the roofing business.

A. Jobbing of roofing materials.

Q. Where do you maintain your factory or your plant?

A. On New Utrecht Avenue and 41st Street, Brooklyn.

Q. What do they call that district out there? That is not Bath Beach, is it?

A. No, that is the section that comes in between Borough Park section on one side and Bay Ridge on the other side. That is just where 10th Avenue and 41st Street and New Utrecht Avenue come together.

Q. Do you do business under your own name or under a firm name?

A. Under a firm name, Mansfield Supply.

Q. Are you a partner?

A. Yes.

Q. And you hold a financial interest in the business?

A. Yes.

Q. Have you been in that business for a number of years?

A. Ever since I was twenty or twenty-two years old.

Q. Is it more than ten?

A. I know I have been in that—

Q. Yes.

A. I have been in that business for twenty-one years.

Q. What is your partner's name?

A. It is my father and another brother.

Q. It is a family group in this business?

A. Yes.

[fol. 1823] Q. What are those contacts that you speak of in this Brownsville-East New York area? Are they in connection with roofers that you supply?

A. They are people who maintain places of business in various parts and Brooklyn. Some are in Brooklyn and East New York.

By the Court:

Q. Just what do you supply?

A. Roofing materials.

Q. Metals?

A. Yes, metals also.

Q. Tar paper?

A. That is right, shingles.

Q. Tar?

A. That is correct.

Q. In that section where you are, what is the cross avenue? What avenue crosses New Utrecht about that point?

A. Well, there is an avenue, 10th Avenue cuts New Utrecht Avenue about where 40th Street intersects; in other words, the corners of 40th Street, 10th Avenue, and New Utrecht Avenue all intersect.

By Mr. Turkus:

Q. That is right at the corner of Greenwood Cemetery?

A. No, that is about ten or fifteen blocks from the Greenwood Cemetery.

Q. South?

A. You have got me.

By the Court:

Q. There is a little manufacturing place there in the section around Fort Hamilton Parkway and 39th Street.

A. That is not far away from where we are.

Q. You are substantially in that section?

A. That is right.

[fol. 1824] Q. I think the Continental Steel has a bottle cap manufacturing there.

A. I don't know them.

By Mr. Turkus:

Q. Mr. Strober, may I go along, then, with the understanding that you have no contacts in **Brownsville** or **East New York** except as you have indicated, with roofers that you supply with material?

A. That is right.

Q. That you have never lived in the **area** or had social or other contacts except as you have described to me?

A. Correct.

Q. Did you hear the questions I put to the other talesmen with respect to any connection in the garment industry or in the clothing industry or clothing truckers?

A. Yes.

Q. Did you ever have any connection with them?

A. No, none whatsoever.

Q. Was there any familiarity with the names of any of the union officials?

A. No.

Q. The Amalgamated or the Clothing Truckers & Helpers Union?

A. No.

Q. So that may I go along with the understanding that in so far as you are concerned there has been absolutely no connection with anybody in the industry or in the areas that I mention?

A. That is right.

Q. Brooklyn waterfront, garment district, clothing center?

A. That is correct.

[fol. 1825] Q. With respect to the nine lawyers in the case, do you know any of them?

A. No.

Q. Or anybody connected in their office?

A. Not that I know of.

Q. Do you know any member of the bar who specializes in the defense of criminal cases?

A. No.

Q. Since you received your jury notice did anybody speak to you about this case?

A. No, only in an offhand. They knew I was a member of the panel, and there was some questions they asked back and forth; but nothing pertaining to any merits of this case.

Q. In other words, was it limited to the prospect that you might—

A. That I might serve on the jury.

By the Court:

Q. Is Fay Strober your father?

A. No, that is my wife, Faye.

Q. Is the business in her name, or is that incorporated?

A. The business is not a corporation. The business is Mansfield Supply Company, in which there are three part-

ners, Samuel Strober, who is my father, Benjamin Strober, who is my brother, and myself.

By Mr. Turkus:

Q. That is the business of filing a certificate with the County Clerk under the law?

A. That is right. There is such a certificate on file.

[fol. 1826] Q. And that is filed with the County Clerk and it lists the names of all the persons interested who transact business as the law requires?

A. That is right.

Q. I do not know whether you have ever been a juror in a criminal case. Have you?

A. I have.

Q. Has it been in this county?

A. About eight or nine years ago I served in Judge Martin's part.

Q. Were any of the lawyers now in the court-room engaged in the trial of that case?

A. No.

Q. Did that case go to a conclusion, and by that I mean did the Judge charge the jury on the law?

A. He did.

Q. I take it that in the eight or nine years you have forgotten all the law you heard in that case?

A. Pretty nearly.

Q. Whether you did or not, will you take the law in this case exclusively from Judge Taylor?

A. I will.

Q. And will you do that in its every aspect?

A. Yes.

Q. No matter who talks law to you, the only one who has the legal right to talk law to you and the only one you will listen to is the Judge?

A. I understand that.

Q. I take it you have heard some of our discussions with reference to an accomplice. Do you have any bias or prejudice against the testimony of an accomplice as would cause you to shut your ears to it?

A. No.

Q. Do you find any fault with the District Attorney who, in order to solve a murder case accepts the testimony of an [fol. 1827] accomplice and uses that against the others in the commission of the crime?

A. No.

Q. Have you followed me?

A. I understand what you mean.

Q. I understand, then, that you have no bias against the prosecutor for the use of that kind of testimony; is that correct?

A. Yes.

Q. Do you have any fault to find with a prosecution which rests in part upon the testimony of an accomplice? Is that clear to you?

A. Yes.

Q. Do you find any fault with that kind of a prosecution?

A. No.

Q. Will you give to the defendants in the court-room who are on trial the benefit of everything that the law of the land says they should have?

A. I will.

Q. And what those things are will you take from Judge Taylor?

A. Yes.

Q. With respect to the tests that you apply to the accomplice to find out if he is telling the truth, will you use the rules and the guides that Judge Taylor gives you?

A. I will.

Q. For example, if he tells you that you should view the testimony of an accomplice with care and with caution, will you do so?

A. I will.

Q. And will you endeavor to apply sensibly all the tests that he gives you to be applied to an accomplice witness?

A. To the best of my ability.

[fol. 1828] Now, in weighing the believability of an accomplice, will you consider the past criminal acts of the accomplice?

A. Yes.

Q. Any vicious or immoral act that he may have committed?

A. Yes.

Q. Any motive or reason that he may have for testifying?

A. I will.

Q. And everything that you can use to conjure up in your own mind as a fair, equitable test as to whether he is telling the truth?

A. To the best of my ability, I will try.

Q. That is not beyond your capabilities?

A. I don't think so.

Q. You are a business man?

A. That is right.

Q. You deal with roofers, and selling the merchandise you meet people and you have contacts in your every-day walks of life, isn't that right?

A. Yes.

Q. And you have handled your business without any difficulty. Nothing mysterious about being a juror?

A. I understand.

Q. Will you devote your mental faculties to find out whether the accomplice in this case is telling the truth about these defendants and the part that each one of them played in the commission of this murder? And will that be the reason for which you apply all these tests to ascertain is he telling the truth about these men on trial and himself?

A. Right.

[foi. 1829] Q. Is that right?

A. That is right.

Q. It may very readily be that you may not like an accomplice, you may not have any use for him, you may detest him, when you see him on the stand and you hear the things he says you may not like him at all. Will you permit any feeling of like or dislike to sway your judgment as to whether or not he is telling the truth?

A. I would not.

Q. In other words, no matter whether you detest him or you shall have no use for him, your job is to find out, is he telling me the truth about these men on trial and himself?

A. That is what I understand.

Q. Is your state of mind such that even a bad man can at times tell the truth?

A. Oh, yes.

Q. Mr. Rosenthal, in speaking of his client Capone, very properly stated that Capone is here to meet only one charge, namely, the charge of murder in this indictment.

A. Yes.

Q. He asked that of other jurors. That is what he is for, isn't that right?

A. Yes.

Q. By the same token do you understand that the duty and obligation of the District Attorney is co-extensive only

with that, to establish guilt beyond a reasonable doubt of the crime of murder in the first degree alleged in this indictment? Do you understand that?

A. I understand.

Q. One of the lawyers for Buchalter has pointed out that Buchalter has been convicted of crimes either on a plea of [fol. 1830] guilty or conviction by a jury, and is serving a sentence for the commission of these offenses, a long sentence. Would you permit yourself to relax your duty as a juror in this case because Buchalter is being punished for other offenses?

A. I would not.

Q. Or would you deviate from a proper result in this murder charge because he is being punished for other offenses?

A. No.

Q. If selected as a juror in this case, will you endeavor conscientiously to arrive at a verdict that does justice in the case?

A. I will.

Q. Is there anything about your business connections that might cause you some hesitation in your desire to sit as a juror in the case?

A. No.

Q. Can you, if accepted as a juror, render a verdict that to your conscience appeals as justice in the case, free of any fear of any claim, nature, or description?

A. Yes.

Q. In other words, if you are satisfied beyond a reasonable doubt that these three men at the bar are guilty of murder in the first degree, can I understand that you will bring in that verdict courageously and without any hesitation?

A. Without any hesitation.

Q. I can go right along with that understanding?

A. Yes.

Q. Mr. Haaf, is that the correct pronunciation?

A. Haaf.

Q. You live at 224-A East 47th Street; is that correct?

A. There is a correction there. That is properly known [fol. 1831] as Schenectady Avenue.

Q. What is the cross street nearest to it?

A. It is between Avenue O and Schenectady Avenue and Flatbush Avenue.

Q. Is that where all those streets come together?

A. Schenectady, Avenue O, Flatbush Avenue, and on the opposite side of Flatbush Avenue——

Q. What do they call that district?

A. Flatlands.

Q. Is that anywhere near Fillmore and East 52nd Street?

A. Well, I have been there about one year, so I am not familiar.

Q. Where did you live before that?

A. At Linden Boulevard and New York Avenue, 322 Linden Boulevard.

Q. That is what is known as East Flatbush, is it?

A. Flatbush section.

Q. Did you live in that district for some number of years?

A. About nine years.

Q. Are you married?

A. I am.

Q. And you reside with your wife and family?

A. Yes.

Q. You are listed here as a tester. Is that with one of the telephone companies?

A. That is with the Brooklyn Edison Company. I am in the — division.

Q. Is that something that has to do with the conduit of power?

A. No, I am presently employed in our 41st Street office. We are concerned with the maintenance and operation——

Q. That is a specialized type of work?

A. Yes.

[fol. 1832] Q. And is it that type of work that required some background by way of college or vocational training?

A. Not necessarily. We have men who do not have degrees.

Q. And how long have you been with the Edison?

A. 11 years.

Q. Can I go along with you as rapidly as we may? I do not suppose by any contacts that you have had with the Edison that you have ever come in contact with any of the people in the garment, clothing district or the other industries that I have mentioned?

A. No.

Q. Do you know anybody engaged in the manufacture of clothes and clothing or the trucking of clothes? Any of

the union officials whose names I have mentioned at all familiar to you? Do you have any contacts with union officials in the Amalgamated or with any clothing truckers?

A. No.

Q. With respect to the other areas, Brownsville-East New York, do you have any contacts there?

A. No.

Q. Any on the Brooklyn waterfront?

A. No.

Q. I take it that none of the names that I have mentioned have been at all familiar to you by way of any contact or past association?

A. No.

Q. Since your name appeared on this jury panel and you received your slip notifying you that you would be required to be in court, did anybody speak to you about the case?

A. Yes.

Q. Was that in regard to jury service, that is, the length [fol. 1833] of jury service?

A. Yes.

Q. The time that you may spend in the court-room?

A. That is right.

Q. Did it have anything to do with the merits of the case?

A. No.

Q. I take it you are in sympathy with the enforcement of the law of the State of New York?

A. That is right.

Q. Have you served as a juror in a criminal case before?

A. No.

Q. As the other jurors indicated, will you, too, take the law exclusively from Judge Taylor?

A. Yes.

Q. And take it from him in its every aspect?

A. That is right.

Q. Do you find any difference, that is, on the subject of accomplice testimony, as they did?

A. No.

Q. Or would you answer substantially the same?

A. I would.

Q. And would you, in applying every test that you can conjure up which is fair to be applied to an accomplice, see

whether he speaks the truth about the combination or the group which he says committed this crime?

A. I would.

Q. As was pointed out by Mr. Rosenthal, and properly so, of course, his client and other defendants are here to meet one charge, guilt or innocence on the indictment here, the Rosen killing. By the same token, do you understand [fol. 1834] that is the only obligation the prosecutor has, to establish guilt of the Rosen killing beyond a reasonable doubt and nothing else? Do you feel the same as the other prospective jurors, Mr. Haas, as have expressed with respect to the sentence for which the defendant Buchalter is now serving for other crimes that he has committed? Do you feel the same as they do, that they will not relax or deviate from a proper verdict because he is being punished for other offenses?

A. Yes.

Q. Do you feel the same?

A. Yes.

Q. Is there anything I failed to bring out by questioning which goes to your ability to render a fair and honest verdict?

A. I have a problem about the duration of this trial. My wife at the present time is sick. My wife and myself come from upstate. We have no relatives whatever in the city, and I feel if I am selected as a juror there will be some question in my mind about my family. There is the question.

Q. Is that something that you took up with the Judge at the time excuses were reached, or is that something that occurred since?

A. The question of sickness.

Q. I think you better address that to the Judge.

Mr. Turkus: This juror has a problem which has arisen yesterday, as I understand it, and if I don't say it accurately Mr. Haas, you explain it to the Judge as you stated to me. He comes from upstate, he has no relatives here in Brooklyn. His wife was taken ill yesterday, and if the trial will [fol. 1835] take a long time, while he does not feel it will impair his state of mind such that he could not render a proper result on the evidence, he would feel much agitated if he had to be with the jury in the case.

By the Court:

Q. What is the trouble?

A. It is a minor trouble. It is a heavy cold with a badly inflamed throat, and she is now under the doctor's care, and there is a question of whether—it is not only a question this particular illness would be involved, but my problem is that if serving as a juror for a long duration of time should anything arise, my wife is in the city alone with no relatives to call on, and there are no other relatives that could be called into the city at the present time.

Q. You mean if she still had the cold?

A. Yes.

Q. As the selection of jurors is tentative at the present time, all we have to do now is to ascertain whether both counsel agree on the jury. Can that question remain open? It will take a few days before we really know when we will start in with the case. In the meantime you are going home.

A. There is still a question in my mind. I feel that I owe a duty to The People to serve as a juror; I also have a duty to my family.

Q. Yes.

A. And in view of the nature of the trial it will probably prolong duration. In view of the fact my wife is not in [fol. 1836] good health—

Q. You mean your wife wants you home. Your wife objects to your being a juror?

A. Not exactly that.

Q. You want to be a juror and your wife does not want you to be a juror?

A. No, I would not say that.

Q. You see that an ordinary cold, most people have them at this time of the year and they get over them quite rapidly. You will know by the end of the week if she is well or not. It is not likely that we will take the evidence until next week.

A. There is still a question in my mind—

Q. Do you live out there towards Bergen Beach section?

A. I am just beyond Avenue N and immediately off Flatbush Avenue.

Q. It is south of Kings Highway?

A. Yes.

Q. Do you live in an apartment house?

A. No, I live in a two-family house.

Q. You have no children?

A. I have one child.

Q. How old is the child?

A. Eight years of age.

Q. Your wife's health is good other than this cold?

A. No, I would not say that. She has been under the doctor's care previously, this spring. She is not in good health.

Q. What is that, a nerve condition?

A. Yes. She has a number of different tests without discovering anything in particular.

Q. Are they trying to find out what is the matter with her?

[fol. 1837] A. Yes.

The Court: All right.

Mr. Rosenthal: We consent.

Mr. Talley: We consent to his being excused in the discretion of the Court.

The Court: I can understand the feeling.

Mr. Turkus: Excused by consent.

The Court: Had they been a resident of the county some time, the family would have friends.

Mr. Talley: Yes, it would make a difference, but he should not be here worrying about his family.

Mr. Barshay: May we have a few minutes' recess?

The Court: We will have to have a recess when the other jurors are walking in, because there will be a disturbance. There will be a recess then.

By Mr. Barshay:

Q. A few questions, gentlemen, collectively: The District Attorney has been gracious enough to ask a few questions which properly belong to me, but he has a right to ask them, and that is all right. Do any of you gentlemen know anybody at all in the Police Department?

A. (By No. 11) I know a Detective Grady, attached to the Parkville Precinct. I have known him for fifteen years, but I would not call him friend.

Q. Do you know his commanding officer?

A. No. The reason I saw I know him, when he was walk-
[fol. 1838] ing a beat he had on his beat a drug store in

which a friend of mine was proprietor, and in going to see this friend of mine in the drug store I used to see this patrolman, and it was only two days ago that I was walking into the building and ran across him and found out he was a detective.

Q. It does not figure in the case?

A. No.

Q. Have you any such friend?

A. I know two men in the financial district, but we call them a nickname.

A. (By No. 8) I have friends and neighbors, but no intimate friends. Daniel—in the Parkville section, I went to school with.

Q. Ever speak to him about his work?

A. I have not seen him for a year or two.

Q. Have you anybody in the Police Department?

A. (By No. 7) A former neighbor in the Police Department lived next door, in the mounted police in Borough Hall section, Mr. Morris, and I forget the other one's name.

Q. Do you know Mr. Donohue of the Police Department?

A. No.

Q. Well, at any rate, that won't affect your judgment in this case?

A. No.

Q. Have any of you gentlemen any acquaintance with anybody in the District Attorney's office, be they assistants or on the clerical staff?

A. (By No. 7) Mr. Moorehead.

Q. He is chief of the Indictment Bureau. How well do you know him?

A. He is in my building. He has his office in 189.

[fol. 1839] Q. Did you ever have any business with him?

A. No, no business.

Q. Have you a social acquaintance with him?

A. No, just greet him.

Q. Did he ever speak of his work?

A. No.

Q. So that your knowledge is merely that of a passing acquaintance?

A. That is right.

Q. Did he help you in your complaint in the D. A.'s office?

A. Did he help me or I help him?

Q. Either way.

A. Yes.

Q. Would that affect your judgment in this case at all?

A. I don't know why it should.

Q. I say it should not, but I am asking you.

A. I do not know why it should.

Q. I take it none of your business with the D. A.'s office will influence you in their direction in this case?

A. No.

Q. Even if the D. A.'s office should contend a proposition adverse to our own, you won't be influenced in their direction by virtue of the business dealings you had?

A. That's right.

Q. I am sure not even they would want you to do that.

A. That is right.

Q. Gillespie, have you read about this case at all?

A. Yes, when it happened.

Q. 1936?

A. Well, I don't know the year, but I read about it when it happened.

Q. And at that time did you form any opinion with respect [fol. 1840] to the alleged perpetrators?

A. No.

Q. Have you read about it since?

A. Since 1936?

Q. Yes.

A. Yes.

Q. May I know in what papers?

A. Well, the only thing I read of it is the case coming up and the papers I read are the *Herald-Tribune* and the *Sun*, and occasionally the *Telegram*.

Q. Did you read anything about the facts of the case?

A. No, no facts. I would not say I read anything about the case at all. The only thing I read is that it happened.

Q. Did you ever read anything about the defendants?

A. Yes.

Q. Was it before or since your being called to serve?

A. Before.

Q. Did you read about them often?

A. Well, what I actually did read that I can recollect is about the defendant Buchalter when they were looking for him and he finally gave himself up. That is about all.

Q. That is a considerable time ago?

A. When it happened.

Q. That had nothing to do with this case?

A. No.

Q. You understand that?

A. That is right.

Q. Did you form an impression unfavorable?

A. I do not know anything about the case. How can I form an impression?

Q. Sometimes people have said right here in your presence that they formed impression without knowing anything at all about the case. You may be one of them. I hope you are not. Which is it?

[fol. 1841] A. I cannot answer you that.

Q. Well, have you formed an impression with respect to the defendants, irrespective of this case?

A. To be honest with you, I find it a tough question to answer.

Q. You may make up your mind with respect to the gentleman you read of.

A. You may think unfavorably of an individual at one time, and then another time you won't. It depends what facts you know.

Q. We will take it step by step, Mr. Gillespie. Did you ever think unfavorably of Mr. Buchalter?

A. No, I don't know how I could.

Q. Do you think of him unfavorably now?

A. No.

Q. In any way? Do you?

A. No.

Q. Is there some doubt in your mind?

A. I don't know. No, there is no doubt. You are talking now where this particular case is concerned.

Q. Well, it may go a little deeper. He may take the stand and you may have to judge him from the testimony he gives.

A. Then I will judge him on the testimony he gives.

Q. What I want to know is whether there is something outside of this case?

A. No.

Q. Which you may use in judging him, which will be to his detriment. You are the best judge of that, Mr. Gillespie.

A. No, there won't be.

Q. Not at all?

A. I will be definite.

[fol. 1842] Q. That is fair. And so that you will judge him on the merits as you see him in this issue only?

A. That is true.

Q. Now, the fact that he has been referred to by the District Attorney by the name of Lepke, does that influence you against him?

A. No, sir.

Q. Or the fact that, while it has, in my opinion, nothing to do with this case, he has been referred to as Lepke and Gurrah; would that influence you?

Mr. Turkus: Just a minute. I object to that question. Defendant Buchalter has never been referred to as Lepke and Gurrah. It is two different people.

Q. Part of the combination as Mr. Turkus questioned you—I wrote it down, “Do you know Lepke and Gurrah? Did you read about or hear about Lepke and Gurrah? Isn’t that what Mr. Turkus said?”

Mr. Turkus: That is two different people.

The Court: We understand, two different people.

Q. I mean that the reference does not interest you?

A. Not at all.

Q. As a matter of fact, Gurrah has nothing to do with this case at all?

A. I would not know.

Q. But the reference to those names has nothing to do with the case?

A. No.

Q. His name is Louis Buchalter.

A. I know that.

Q. You understand we are not trying here conditions in [fol. 1843] Brownsville, any conditions in Brownsville or any people in Brownsville whose names were read, but we are only trying Mr. Louis Buchalter for this charge. That is clear, isn’t it?

A. Perfectly.

Q. And we are not concerned with corners, and who owns candy stores on those corners and who congregates, unless it is part of the evidence in this case and has a bearing on this case, isn’t that so?

A. That is so.

Q. Have I your word, sir, that you formed no opinion of any kind, nature or description with respect to the guilt or innocence in this case?

A. That is true.

Q. And, along with that, do you believe that the Grand Jury can indict an innocent man?

A. Yes.

Q. And along with that, are you in accord with the presumption of innocence accorded to every defendant?

A. Yes.

Q. That is not a privilege; that is a substantial right of every defendant. Mr. Turkus has asked you if you are in sympathy with the enforcement of the penal law. I will go a little further. There is a Criminal Code and there is a State Constitution and there is a United States Constitution, and there are lots of rights on those books. His Honor shall tell you about them. Are you in accord with them, too?

A. Yes, sir.

Q. They benefit the defendant, as they benefit every defendant. You are in accord with that, aren't you?

[fol. 1844] A. Supposed to benefit every individual.

Q. Mr. Turkus has asked you whether you find any fault with the prosecutor for doing certain things. I take it you do not find any fault with any of the counsel in this case on either side.

A. No, I don't.

Q. For any reason. The counsel have nothing to do with this case with respect to your finding fault with us or any, have they?

A. No.

Q. The point is, Mr. Turkus will do his best and we will do our best; isn't that so?

A. Right.

Q. There is nothing personal in this between the prosecutor and the defense counsel. You understand that? This is not a game of wits; you understand that?

Mr. Turkus: I object to that.

Q. Is it?

Mr. Turkus: No, this is not a game of wits.

The Court: Overruled.

Mr. Barshay: That is what I said.

Q. He is not a witness in this case any more than I am a witness to my client's defense, you understand that?

A. Yes.

Q. But he presents what has been handed to him, and I present what has been handed to me.

A. That is right.

Q. That is fair, isn't it? Mr. Turkus has asked you whether or not you knew Mr. William W. Kleinman. He is Captain Kleinman, Judge Advocate in the United States [fol. 1845] Army, stationed at Fort Wheeler in Georgia. Do you know him at all? He was a partner of David Price. One of the gentlemen who shall assist Mr. Turkus in the prosecution of this case is Mr. Klein, who was formerly associated with Mr. Price and Mr. Kleinman. Do you know him?

A. No, sir.

Q. Did you ever know Mr. Turkus when he was practicing criminal law?

A. No, sir.

Q. You said something about property belonging to you being the place where certain things happened.

A. Managed by us.

Q. We heard what they were.

A. Yes.

Q. Would that influence your judgment in this case to the detriment of these defendants?

A. Would not influence my judgment in this case, but at the time those things happened they were not any too favorable.

Q. I take it you do not charge that to these defendants?

A. No.

Q. That unfavorable impression which you gained then when it did happen, is it present now?

A. No.

Q. You can dismiss that, can't you?

A. That is right.

Q. It has nothing to do with the defendants?

A. No.

Q. You understand that?

A. They are different cases.

Q. No connection whatever with this case?

A. Not that I know of.

Q. Or with the defendants?

A. Not that I know of.

[fol. 1846] Q. And you won't let that past unfavorable impression carry over in any respect whatever, is that so, Mr. Gillespie?

A. Yes.

Q. Have you ever had prior service as a juror?

A. Yes.

Q. In a criminal case?

A. I was called but never served.

Q. Was it in this court?

A. It was in this building and in the County Court. All I did was come there. No one called and I think four days I was excused.

Q. You were put in the box and excused?

A. No, my name was never reached from the drum.

Q. I was not the prosecutor, was I, then?

A. I don't remember anyone.

Q. Was Mr. Turkus the defense attorney then?

A. If you were there seven years ago.

Q. I was there twelve years ago.

A. Too early.

Q. You did not see him, either?

Mr. Turkus: I never had a criminal case eight years ago.

Q. Were you ever called for the Grand Jury?

A. No, sir.

Q. Or for the Federal Jury?

A. No, sir.

Q. Were you ever a victim of a crime personally?

A. What do you mean, held up, or something like that?

Q. Or burglary or stealing of a car?

A. Our home was robbed twice, outside of being pick-pocketed; that's about all.

Q. Was the man caught?

A. I did not get my money back, if he was.

[fol. 1847] Q. You are not prejudiced against people charged with crime by virtue of your sad experience?

A. No.

Q. Mr. Turkus has asked you whether or not you find fault with the prosecutor who accepts the testimony of an accomplice, and you said no. The fact that the District Attorney has accepted the testimony of an accomplice will have no bearing on your accepting or rejecting that testimony?

A. That is absolutely true.

Q. What he does is his job; what you do is yours; is that correct?

A. Yes.

Q. You may have different tests to apply, is that so?

[fol. 1848] A. At that particular time.

Q. You may have different standards. He may be forced to accept it, and you are not forced; is that so?

Mr. Turkus: I object to that question. That carries with it some sort of an implication unfavorable to the District Attorney's staff.

The Court: It is ambiguous. Sustained.

Mr. Barshay: Respectfully except.

Q. In a question put to you it was suggested that they cannot convict an accomplice. Of course, you cannot convict anybody who is not mentioned in the indictment. You know that?

Mr. Turkus: I was ruled out on this question. If this will permit me to open it up with the next jurors, I will have no objection.

Mr. Barshay: Your Honor, maybe some impression was left with that statement, even though it was ruled out after objections three times put to the question.

The Court: Finish the question.

(Pending question read by the reporter.)

Mr. Turkus: I was not permitted to go into that theory.

The Court: Is there an objection?

Mr. Turkus: Yes.

The Court: Sustained.

[fol. 1849] Mr. Barshay: Exception, sir.

Q. You understand that if the District Attorney desired, whoever the accomplice may have been could have been indicted in this case?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. At any rate, you will consider, when he takes the stand, whoever that accomplice may be, whether or not his failure to be indicted causes him, as a hope of reward or as a received reward, to give testimony in this case against these defendants, won't you?

A. That is right.

Q. I take it you now know that the indictment in this case is merely an accusation?

A. Yes, sir.

Q. It has no probative value? It is not evidence in the case, you understand?

A. That is right.

Q. In other words, you do not proceed on the theory that where there is smoke there must be fire?

A. I know what an indictment is.

The Court: We will take a little recess now. Defendants remanded. We will reassemble at five o'clock.

(Whereupon a short recess was taken.)

(5:00 P. M.)

Trial Resumed

By Mr. Barshay:

[fol. 1850] Q. Now, Mr. Gillespie, were a man to take the stand and claim he is an accomplice, if his name—I will tell you, his name is Sholem Bernstein—do you know that man?

A. No, sir.

Q. Will you take into consideration that that same man—if that is he—had at one time testified in another court under oath, and there he denied he was an accomplice in this case? Will you take that into consideration?

Mr. Turkus: I object.

The Court: Objection sustained. It is too specific.

Q. If any people take the stand and you discover, after they are examined and cross-examined, you believe in your own mind that is the fact, that at one time or another when they had an opportunity to say whether they were or were not accomplices in this case they said "No," will you take that into consideration?

A. Yes, sir.

Q. And then you will want to find out why they changed again, if there is a change—don't take my word for it—

A. Yes, sir.

Q. You will want to find out who those accomplices are before you shall accept their testimony?

A. That is right.

Q. You understand the job which you have here is to search for the truth?

A. Yes, sir.

Q. You know it is for you to say which part you accept and which part you reject, or which you shall reject entirely?

[fol. 1851] A. Yes, sir.

Q. Mr. Turkus has asked you to use reason and logic in deciding this case. I ask you if you will use reason and logic in determining whether or not any person tells the truth.

A. Yes, sir.

Q. And if the Court shall tell you you must view the testimony of an accomplice with care and caution and suspicion, will you accept that?

A. Yes, sir.

Q. Will you do that?

A. Yes, sir.

Q. So it is reasonable to assume you shall take into consideration when a person takes the stand and says he is an accomplice, what has been his life?

A. Yes, sir.

Q. Has it been a clean one or a dirty one?

A. Yes, sir.

Q. Has he committed any murders himself for which he has not been and can no longer be punished? You will consider that if that is the fact?

A. Yes, sir.

Q. Has he been a robber, a gunman, a shylock, a pimp—you will consider that?

A. Yes, sir.

Q. With every demerit mark that he admits you, by the same token, will weigh his testimony according to the Court's instruction?

A. Yes, sir.

Q. That is your job?

A. Yes, sir.

Q. So if he says that he is now an accomplice, if he declares himself to be one, and he says that he participated in the killing of Rosen, even though you accept the fact he [fol. 1852] did participate in the killing of Rosen, you will want to find out whether or not he is telling the truth as to whether or not Buchalter was an accomplice?

A. Yes, sir.

Q. You may believe him. As Mr. Turkus said, a bad man can tell the truth. You may believe him with respect to that, that he participated in the killing of Rosen?

A. Yes, sir.

Q. And then you will go to the next point: Is it true that he is an accomplice of Buchalter? Isn't that so?

A. Yes, sir.

Q. And then will you take into consideration, in deciding whether there has been any conspiracy between him and Buchalter, whether he ever saw or spoke to Buchalter in all his life?

A. Yes, sir.

Q. And if you find he never saw him, never spoke to him, never had anything to do with him, you will consider that in accepting or rejecting his testimony when he says, "I was an accomplice with Buchalter"?

A. Yes, sir.

Q. You will take into consideration that all his life, if he admits it, if it is true, if you find it is true, he has been declaring himself in on other people's business, in accepting or rejecting his testimony?

A. Yes, sir.

Q. So, no matter what else you may believe, if you find there is a reasonable doubt as to whether or not Buchalter is his accomplice, you will say so by your verdict?

A. Yes, sir, that is right.

[fol. 1853] Q. So it does not necessarily mean that Rosen was at such and such a place on such and such a date killed with a gun and the cops came there and found the body, that has nothing to do with Buchalter?

A. No, sir.

Q. Unless and until, beyond a reasonable doubt, by evidence which you believe, he has connected Mr. Buchalter with the commission of this crime.

A. Yes, sir.

Q. All the while you will be giving to Mr. Buchalter the presumption of innocence, because that is what the Judge shall tell you to do?

A. Yes, sir.

Q. Now, the fact that the District Attorney opens up his case, presents his side of the case first, it may take a week, as he says, before putting a witness on the stand, you would not be accepting that testimony before the entire case is Completely finished?

A. No, sir, that is right.

Q. And if you find in the motive of any witness who takes the stand here some hope that he has for himself, or as to future punishment or incarceration, you will consider that too?

A. Yes, sir.

Q. And if you find that the witnesses, since they confessed their own participation in the crime, have lived in hotels, ate of the best, rode out days, rode at night, allowed their women to come up and visit them, went to baseball games and participated in baseball games, all at the taxpayers' expense, will you consider that as an inducing motive [fol. 1854] for them to come in here and say something against the defendants in this case?

A. Yes, sir.

Q. In other words, because of the treatment they got and the hope of future like treatment may have induced them to testify here?

A. It is hard for me to answer that.

Q. You are the one to find out, what is he giving testimony for? Is it in exchange for something that he has got or hopes to get?

Mr. Turkus: Objected to as speculative.

The Court: Objection sustained. You are trying to find out how he would decide the case.

Mr. Barshay: Exception. Mr. Turkus himself told the jury that—

The Court: No argument after the Court rules.

Q. Is it conceivable to you that any person may be induced to testify falsely by the very treatment he gets?

Mr. Turkus: I object. He has already answered that.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Did I understand you to say you answered any and all these questions I asked?

A. Yes, sir.

Mr. Turkus: I object.

Q. Well, summing it up in one question, do you appreciate that in the ordinary course of life people may have reasons to depart from the truth and falsify?

A. Yes, sir.

[fol. 1855] Q. You shall be the one who will find that out as each person takes the stand?

A. Yes, sir.

Q. Individually and separately from any other juror?

A. Yes, sir.

Q. Now, even if he denies that that is the motivating reason, you will be bound to accept that denial, and you shall decide whether that denial is true or false?

A. Yes, sir.

Q. Especially, will you consider the fact that by telling his story the person who tells it is trying to gain his own liberty?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Barshay: Exception.

The Court:

Q. I understood you to say previously that you would scrutinize the motive of any alleged accomplice.

A. That is right.

By the Court:

Q. Any and all inducements which may have a bearing upon the credibility of his testimony?

A. Yes, sir.

Q. Including the gaining of immunity, providing that is done?

A. Yes, sir.

By Mr. Barshay:

Q. Along that line I ask you further, you won't require me to prove to you, or you would not expect him, whoever he may be, to admit to me that he is getting any immunity—[fol. 1856] you will be the one to decide whether or not that is so.

Mr. Turkus: I object.

The Court: The case is going to be decided on the evidence. Objection sustained.

Mr. Barshay: Exception.

Q. If you believe that the person who takes the stand is lying with respect to that, you will take that into consideration?

Mr. Turkus: Objected to as already answered.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. If you believe from the evidence that this man is hoping for some reward because of the testimony he is giving, you will take that into consideration too.

Mr. Turkus: Objected to as repetitious.

The Court: We have been all over that, Mr. Barshay.

Q. Because a man takes the stand and says, "I shall tell the truth," it does not mean that he will, does it?

A. I understand.

Q. It is for you to say whether you believe or you do not believe that man on any subject that he gives testimony on.

A. Yes, sir.

Q. That covers everything?

A. Yes, sir.

Q. Now, to get away from accomplices—we will go to the people who are offered here with a view of giving testimony [fol. 1857] tending to connect our defendant or any defendant with the commission of this crime—you know that is necessary?

A. Yes, sir.

Q. Without it you will not have anything to do. Will you use the same tests with respect to accepting or rejecting testimony of those people as you will use in accepting or rejecting the truth of those who say they are accomplices?

Mr. Turkus: I object. That is asking the juror to take the instruction of law that may not apply to that type of witness.

The Court: Objection sustained.

Q. Will you view with caution and care the testimony of any person who is offered here for the purpose of tending to corroborate an accomplice's testimony, if you find that person himself has been leading a life of crime and has been convicted and has been in jail?

A. Yes, sir.

Q. You would not accept testimony of that kind of an individual as readily as you would the testimony of a clean man?

Mr. Turkus: I object.

The Court: I don't know why these questions are asked over and over again. It just strings out the examination of the talesman and makes a longer session.

Mr. Barshay: Your honor, Mr. Turkus has questioned for two and a half hours. I have only gone twenty-five minutes. I cannot help it if he has taken my questions and [fol. 1858] addressed them to the jurors.

The Court: Are you insinuating the Court is unfair in its rulings?

Mr. Barshay: No, not at all.

The Court: Then please come to order and follow the Court's ruling.

By Mr. Barshay:

Q. You know what I am driving at?

A. Yes, sir.

Q. They are going to offer witnesses——

The Court: You ask the same questions over and over again, and you are losing time. Your colleague wants to get away, but he has got to sit here during the time you are wasting.

Mr. Barshay: Exception.

The Court: You may take your exception, but you are not going to get the Court to lose its judgment. I am willing to sit here until ten o'clock tonight. If you have any questions to ask on subjects that you have not already covered and received an adequate answer on, go ahead with Mr. Gillespie further, otherwise pass on to the next question.

Mr. Barshay: I urge the Court that I have not asked Mr. Gillespie one question about corroborating witnesses.

The Court: Do not argue, proceed.

Q. If you find that the men who offer the corroborating testimony of these accomplices who have received immunity [fol. 1859] from the District Attorney for the crime which they have committed, have committed numerous crimes, which they will admit themselves, will you carefully weigh their testimony before you accept it?

A. Yes, sir.

Q. So, with respect to them, you will find out their interest in the case in the giving of this testimony?

A. Yes, sir.

Q. Irrespective of the accomplice—we are finished with him for a while.

A. Yes, sir.

Q. I have said before that Mr. Buchalter is incarcerated for a long time, only to find from you whether or not you would be prejudiced against him by virtue thereof.

A. I previously said no.

Q. That would have nothing to do with this case unless you are otherwise charged on the law?

A. That is right.

Q. If the Court should charge you that no defendant need explain any charge against him or disprove any accusation against him or prove his innocence, will you accept that from his Honor?

A. Yes, sir.

Q. If a defendant should decide to rest on The People's case and not offer a single witness in explanation of anything, you will still search the evidence to find out whether or not beyond a reasonable doubt there has been proof against the defendant Buchalter?

A. Yes, sir.

Q. And his failure to explain, either through himself or [fol. 1860] through witnesses, if the Court shall tell you, shall not be used by you in an unfavorable light, but in the light the Court will charge you, will you do that?

A. Yes, sir.

Q. To sum it all up, you will say to the District Attorney, "You accuse, now you prove beyond a reasonable doubt"?

A. Yes, sir.

Q. Now, if the Court shall tell you, as I am sure it will, that character is no part of this case at all, will you follow that?

A. Yes, sir.

Q. Of course, unless the defendant chooses to put it into issue?

A. Yes, sir.

Q. Only then have you the right to consider it.

A. I understand.

Q. You know there is no one living who has a right to criticize a verdict you render?

A. Yes, sir.

Q. Once you render your verdict you are not subject to criticism, no matter what that verdict is?

The Court: What do you mean by that?

Mr. Barshay: I except to the Court's comment.

The Court: I asked you a question. I ask you to qualify your question. If there is any such law I would like to be informed of it.

Mr. Barshay: The Civil Rights law says that.

The Court: I beg your pardon. I call your attention to Article 2 of the Civil Rights Law. A juror may not be questioned, but individuals are free to criticize everything in the world, if they do not agree.

Mr. Barshay: That is exactly what I mean.

The Witness: That is the way I understood it.

Q. You would not have to explain to anyone finding fault the way you rendered a verdict in this case?

A. That is right.

Q. You would not be afraid of any subsequent question or criticism that might come? You will not be afraid when you are deciding this case on the merits; that is what I mean.

A. Yes, sir.

Mr. Turkus: I object. There cannot be any criticism if it is on the merits.

The Court: Sustained. That is too far afield.

Mr. Barshay: Exception.

Q. There may be testimony which may be given against one defendant which will not be binding on another defendant; will you be able to keep the testimony separate and use it against the defendant to whom it applies?

A. Yes, sir, against the individual.

Q. While they are being tried together, you understand that each one is being tried separately?

A. Yes, sir.

Q. For merely a matter of convenience they are being tried together?

A. Yes, sir.

Q. May I have your word and assurance that you will not [fol. 1862] use the testimony which applies to one defendant against another unless his Honor says you may?

A. Yes, sir. You have my word that all the testimony that applies to the three of them I will apply to the three of them, and that which applies individually applies individually.

Q. All I ask you to do is to consider it against the person to whom it applies and against no other person.

Mr. Turkus: I object.

The Court: It is a question of law and subject to construction by the Court on a complicated point of law. It is improper. Sustained.

Q. The defendant Buchalter is entitled to a separate verdict based upon the evidence presented in this case; if the Court shall tell you that, will you follow it?

A. Yes, sir.

Q. Are you willing to undertake to do that?

A. If the Court instructs, yes.

Q. (The Court:) You will decide separately as to each?

A. Yes, sir.

Q. If, after discussing with your fellow jurors, you find and personally feel that Mr. Buchalter has not been proven guilty beyond a reasonable doubt, you will say so?

A. Yes, sir.

By Mr. Barshay:

Q. Now, Mr. Gill, do you know anybody at all connected [fol. 1863] in this case?

A. I do not.

Q. I don't know whether or not you said you had prior jury service.

A. No, sir; but I have had prior jury service.

Q. Did your case come to a conclusion?

A. It was not my case, it was a case in the Supreme Court.

Q. You were never in a criminal case?

A. Yes, sir, on one occasion; I don't know whether it was before Judge Martin or Judge Nova, in the County Court, five or six years ago.

Q. Whatever it may have been, there is no impression with you now?

A. No, sir, it was not a very important case.

Q. Have you read about this case?

A. Not extensively. I have read headlines.

Q. Have you read about the defendants?

A. No, sir, I have not.

Q. By virtue of reading these headlines, have you formed any opinion or impression?

A. No, sir.

Q. Personally, is there anything in your mind prejudicial to the defendants?

A. No, sir.

Q. Does the fact that a person has been shot influence your judgment at all?

A. No, sir.

Q. I take it you do not favor either side in this case now?

A. No, sir.

Q. Did you discuss this case with anybody else?

A. Not since my jury notice.

Q. Did you discuss the defendants with anyone at all?

[fol. 1864] A. No, sir.

Q. As you listened to prospective jurors being questioned, have you formed any impression one way or the other?

A. No, sir.

Q. Has the fact that there have sometimes been arguments between counsel influenced you at all?

A. No, sir, none whatever.

Q. Have the questions put to any other jurors or any answers made by any other jurors, influenced you?

A. No, sir.

Q. Do you appreciate that counsel have a right, in their belief, to try within the rules of law to get their juries?

A. Yes, sir.

Q. You do not know Mr. Buchalter?

A. No, sir.

Q. Has the name Lepke or any other name by which he may have been called anything to do with this case?

A. No, sir.

Q. Were you ever the victim of any crime?

A. No, sir.

Q. There are some rules that have been laid down or will be laid down by the Court with respect to the acceptance or rejection of the testimony of accomplices. You heard that?

A. Yes, sir.

Q. Are you fully in accord with that?

A. I have not heard the rule.

Q. It has been suggested to Mr. Gillespie, regarding the caution, care and suspicion you must put upon accomplice testimony.

A. Yes, sir; I will take that into consideration.

Q. Are you in accord with those rules?

[fol. 1865] A. In so far as the Judge's charge is concerned.

Q. You can rest assured the Judge will charge you about it. Will you accept it?

A. Yes, sir.

Q. You have no prejudice against any rule which may be propounded by the Court, no matter what it is?

A. No, sir.

Q. As to the acceptance or rejection of accomplices' testimony?

A. I don't know the rules.

Q. You heard me say to Mr. Gillespie that if the Court should charge the jury that before they accept an accomplice's testimony they must look upon it with caution and with suspicion and with care and consider the source from which it comes, and the motive with which it is given, and the inducement held out, and the hope of reward that the accomplice may have—that sums it up briefly—if the Court shall so charge you, is that clear—

A. Yes sir.

Q. —will you accept those rules?

A. Yes, sir.

Q. You have no bias against such rules?

A. No, sir.

Q. And that reason applies, if the Court shall charge you, to the testimony of any witness who has a motive or a prior conviction or admits the commission of murder and other crimes.

A. Yes, sir.

Q. In other words, will you search for the truth as each witness takes the stand?

A. Yes, sir.

Q. And if, after consideration of all of his testimony, you yourself having talked it over, that is, the facts, decide for [fol. 1866] yourself, in true conscience, that as far as the defendant Buchalter is concerned there is a reasonable doubt, will you give it to him?

A. I will.

Q. Having heard the same questions put to the other jurors with respect to the defendant not having to prove his innocence, will you demand it, if the Court charges you, that nobody need prove his innocence?

A. I understand.

Q. You will not demand it?

A. No, sir.

Q. You won't demand a defendant to prove his innocence if the Court charges?

A. I will presume a defendant innocent until proven guilty beyond a reasonable doubt.

Q. Would you have any prejudice against Mr. Buchalter because of his present incarceration?

A. No, sir.

Q. That is gone?

A. Yes, sir.

Q. You will try only this issue?

A. Yes, sir.

Q. You will take into consideration, I take it, if someone claims to be his accomplice, whether or not he really is his accomplice?

A. Yes, sir.

Q. And one of the facts you will consider is the fact, if it is proven here, that that person never saw or spoke to the accomplice, never in his life; isn't that so?

A. Yes, sir.

Q. And if the Court shall tell you that character is not in issue in this case, you will accept that from his Honor?

A. Yes, sir.

Q. Can Mr. Buchalter entrust to you the keeping of his [fol. 1867] legal rights, or the preservation of his legal rights?

A. Yes, sir.

Q. And that goes for every single right given to the defendant?

A. Yes, sir.

Q. Will you render a verdict based upon the evidence with respect to Mr. Buchalter, one that reflects the truth in this case?

A. Yes, sir.

Q. You will have the courage to do so?

A. Yes, sir.

Q. Is there anything in the case that has been put before the other jurors by way of questions, which have not been put to you, which would preclude you from rendering an impartial verdict here?

A. No, sir.

Q. Mr. Gil', do you know anyone at all in this court-room?

A. No, sir.

Q. Who is a depositor. Is the District Attorney's office a depository with your office?

A. I could not say. I know certain deposits of the City are there.

Q. At any rate, Judge O'Dwyer's office has no business in connection with you?

A. No, sir.

Q. Have you had any prior jury experience?

A. I appeared before Judge Dunn in the Supreme Court once.

Q. Have you ever been in the Grand Jury?

A. No, sir.

Q. Or the Federal jury?

A. No, sir.

Q. Have you personally been the victim of any crime?

A. Not yet.

[fol. 1868] Q. May I know the name of your chief in your place of business?

A. Mr. Gibson.

Q. Have you read about the case?

A. A week prior to the time, but I read nothing outstanding. The only things that stay in my mind are two editions, one was one of the tabloid sheets, I cannot recall, and the other was *P. M.* I read it casually, as I did the other.

Q. Did they impress you?

A. Well, it is difficult to read anything of that nature without getting an impression.

Q. Did they impress you?

A. They did.

Q. Were those impressions unfavorable to the defendants?

A. It was a superficial one, yes, sir.

Q. Is it present now?

A. Nothing has occurred to change it.

Q. Will it require some testimony to change your impression?

A. Well, in a case of this nature I would expect testimony, yes.

Q. Will you require it to come from the defense?

A. As an ordinary layman I should say so, yes, sir.

Q. That is your honest impression now?

A. Yes, sir.

Q. And if it does not come forward from the defense, I take it the impression will still remain?

A. I suppose so.

Mr. Barshay: Challenge for cause.

The Court: Try the challenge.

JAMES F. GILL, No. 2799, residing at 266 Washington Avenue, Brooklyn, New York, was sworn on the chal-[fol. 1869] lenge.

By Mr. Barshay:

Q. Now, being under oath, would you answer the questions in the same way as you answered them before?

➤ A. I would.

Q. Would they be honest answers?

A. They would be honest and true answers.

By Mr. Rosenthal:

Q. You candidly said that you have an impression now in your mind by reason of certain articles you have read and certain pictures you have seen?

A. Yes, sir.

Q. And that impression which you have goes to the guilt or innocence of the defendants in this case?

A. Yes, sir, that is exactly what I meant to convey.

Q. I am not finding any fault with you; I am just trying to get the state of your mind. That is true, notwithstanding the fact that you have been in court here and understand from the questioning of other jurors and from the statements of the Court and of Mr. Turkus the rules of law governing a criminal case?

A. Yes, sir, I do; I understand.

Q. You understand the defendant is presumed innocent and never has to prove his innocence—that it is up to the District Attorney to prove his guilt beyond a reasonable doubt, and all those things which have been explained to you?

A. Exactly.

Q. And notwithstanding that fact, the state of your mind [fol. 1870] at this time is one of prejudice which goes to the guilt or innocence of the defendants or some of them in this trial?

A. I don't like the word "prejudice."

Q. I will not use the word "prejudice." The impression you have is of such a nature it goes to the question of guilt or innocence of one or more of the defendants on trial in this case?

A. Yes, sir.

By Mr. Turkus:

Q. I think in discussing the case with the lawyers you said you had a bank connection.

A. Yes, sir.

Q. You do some executive work, if I remember, for one of the officials of the bank?

Mr. Cuff: I object. That does not go to the question of the challenge.

A. I would not say executive work, but I do some work for the executives.

Q. So, in doing this work, whatever it is, it entails the operation of your mind?

A. Yes, sir.

Q. You don't run it alone with your hands, you run it with your head?

A. Yes, sir.

Q. Now, has it been explained to you that in a criminal case the defendant has no burden at all?

A. Yes, sir.

Q. The burden is entirely upon the District Attorney to establish guilt?

A. Yes, sir, that is my clear understanding.

Q. To establish guilt upon the believable evidence he [fol. 1871] proves in the court-room?

A. Yes, sir.

Q. And that there is no burden on the defendant in a criminal case to do anything: he can sit down and remain mute, and if he does, no unfavorable inference can be drawn from his failure to even take the stand?

A. I know.

Q. Bearing in mind that the guilt or innocence charge is determined in the court-room upon the evidence, do you feel that you can lay aside whatever impression you have gathered from seeing tabloids and reading articles in *P. M.*?

A. I believe I am intelligent enough for that.

By the Court:

Q. You have not told us whether or not your opinion as to the guilt or innocence is related to this specific charge. Is your impression as to guilt or innocence general or specific?

A. No, sir it is general—that is, superficial.

Q. Did you read anything about this specific charge?

A. No, sir. What I did read was read very casually. Ordinarily I don't have much time to spend time on anything like that. I will tell you how I happened to read the tabloid. I was coming back from Massachusetts and I read it—

Q. It is not an opinion as to the guilt or innocence of the defendants?

A. No, sir.

Q. Or any of them, in this case?

A. No, sir.

Mr. Rosenthal: I except to the Court's answer. The question propounded by me was specifically as to whether or [vol. 1872] not the opinion gained or the impression had by the talesman was as to the guilt or innocence of the defendants on this charge, and the answer to that question was "Yes."

The Court: You may think you did, but I noticed you did not. You may ask it now, if you wish.

By Mr. Rosenthal:

Q. When I questioned you, Mr. Gill, before, I questioned you as to whether you had an impression at this time in respect to one or more of the defendants, and you said, "Yes."

A. I think perhaps it was on the—

Q. In any event, as you sit here now, the matters which you read and the tabloids with the articles are still fresh and present in your mind?

A. They are in my mind, but I cannot say how fresh.

Q. They are in your mind to such an extent that at this moment you have a prejudice against one or more of the defendants—that impression is detrimental to one or more of these defendants; isn't that true?

Mr. Turkus: I object. That is a double question.

Mr. Rosenthal: I withdraw it.

Q. I say, you have an opinion or impression detrimental to the interests of one or more of the defendants on trial, isn't that true?

A. I am not judging these men at all; I have had an impression, but I am not familiar with the case; I read of it in a casual way—I cannot make it clear.

[fol. 1873] Q. Didn't you say your impression was of such a nature it goes to the guilt or innocence of one or more of the defendants in this charge?

A. Yes, sir, I did.

Q. We are talking about this specific charge.

A. Yes, no other charge.

Q. And you mean you formed an opinion as to the guilt or innocence?

A. I formed a strong impression.

The Court: Challenge sustained.

PHILIP STROBER, was examined as to his qualifications to serve as a juror.

By Mr. Barshay:

Q. Mr. Strober, I will speak loud to you so that you can hear me. Have you had any previous jury service?

A. Yes, sir.

Q. How recently?

A. Eight years ago.

Q. Have you read about this case?

A. This particular case?

Q. Yes.

A. Only the fact that certain people were being held for an alleged murder of a certain person.

Q. Has that left any impression with you?

A. No, sir.

Q. No matter what else you may think, as far as this case is concerned, you will accord the presumption of innocence to the defendants?

A. Yes, sir.

Q. You will not expect us to prove their innocence or explain any charge against them?

A. No, sir.

Q. Will you consider the fact that one of the men is serving a long term in prison against him?

A. I would not.

Q. So we will start off from scratch. You know none of these people?

A. No, sir.

Q. All the rights that his Honor says belong to the defendants at all times you shall give to them?

A. Yes, sir.

Q. You are familiar by this time with the questions put to you as to how to accept or how to reject accomplice testimony?

A. Yes, sir, I will take it from the Judge's charge. Whatever he tells me is the law, I would apply.

Q. If he told you you must accept it with caution and care?

A. No matter what the Judge charges, I will try to abide by it.

Q. I am asking now if you will take his instructions.

A. Yes, sir, if he charges, I will take them.

Q. And if after a consideration of all of the evidence in the case, you feel as an individual juror, after having heard and talked and reasoned with your fellow jurors, that somewhere in the evidence there is a doubt with respect to the defendant Buchalter's guilt, will you say so?

A. Yes, sir.

The Court: Reasonable doubt; it must be a reasonable doubt.

The Witness: I think he really meant reasonable doubt.

Q. I can rely on you being a judge of the facts?

A. Yes, sir.

Q. And accepting the law from his Honor?

A. Yes, sir.

Q. And whatever verdict you render will be a fair and [fol. 1875] impartial one?

A. That is as far as I am concerned.

Mr. Talley: (Addressing jurors in box) Gentlemen, I will put my questions to you collectively as far as possible. You, by this time, I think, understand the law in this case. There is a difference in other countries, but in this country a man is indicted and thereby charged with a crime. The burden does not rest upon him, as it does in other countries, to prove his innocence. The Court will charge you that the law in this country is that a man must be proven by The People to be guilty, represented by the District Attorney. Then it goes a step further. He must be proven, to the satisfaction of a jury, guilty beyond a reasonable doubt.

My question to you gentlemen is, may I rely upon the fact that, if accepted as jurors, you will require the District Attorney to sustain that burden and prove the guilt of any of these defendants beyond a reasonable doubt? May I rely upon that?

The Jurors (Collectively): Yes, sir.

Q. That means this: If you have a reasonable doubt after hearing all of the testimony and weighing it carefully in your own minds, discussing it fairly with your fellow jurors, if you have a reasonable doubt as to the guilt of these defendants, will you give them the benefit of that doubt?

A. (By the talesmen collectively.) Yes, sir.

[fol. 1876] By Mr. Rosenthal:

Q. Mr. Gillespie, most of the questions which I am going to ask you three men are going to be individual ones, since most of the questions, the legal questions, have been covered by Mr. Bayshay; I remember you stated both to Mr. Turkus and to Mr. Barshay that you had read a number of articles when Judge O'Dwyer came into office, in respect to crime. Did you tell Mr. Turkus you believed you read those articles when Judge O'Dwyer's investigation started?

A. I read something on his investigation, yes, sir.

Q. Was it at that time or prior to that time you learned of the name of Reles—I think that was one of the names Mr. Turkus mentioned—Strauss was another—Goldstein was another—you say you heard of the name of Goldstein?

A. I read it, but I do not remember the names.

Q. I do not want to discuss what you read; I want to find out whether I am correct in quoting you. You said in answer to Mr. Turkus—did you, at the time read concerning persons bearing the names of Reles, Strauss, or Goldstein, or all three of them?

A. I have read about the investigation; I have read a number of names. It may have been three or more. The exact names, you may be right in mentioning them, but I do not want to say something and then be wrong.

Q. No, I am only trying to ascertain whether, when you made answers to Mr. Turkus, when he asked you if you had [fol. 1877] heard of the names of Reles, Strauss, & Goldstein, you said you had.

A. Yes, sir, I have.

Q. I am not finding fault with your memory.

A. It may have been in those articles in connection with the investigation, or another article.

Q. Did you hear those names prior to this so-called investigation in and about Brownsville?

A. You are going back some time. I cannot say exactly whether it was prior or after.

Q. Can you give me an idea about approximately what year it was you first heard any of those names, how many years ago?

A. Three, four.

Q. Judge O'Dwyer went in office January 1, 1940. That was the source of your hearing those names three or four years ago, the comment of individuals in and about Brownsville in conversation with you?

A. I don't know.

Q. Have you any idea at all about where you first heard the names of those individuals that you told Mr. Turkus you heard?

A. No.

Q. Can you recall whether or not it was in discussion with tenants of your buildings that were situated in the Brownsville area?

A. I cannot tell you that, because most of my relations with tenants is in the collection and the paying of rent, and anything that may come up I listen to and take it as part of the conversation.

Q. Well, was it in connection with this statement you [fol. 1878] made regarding some bodies that were in the premises you owned that you heard the name of Reles discussed?

A. That I know, definitely.

Q. When was it you heard Reles' name discussed in connection with these bodies that were found on your premises?

A. I don't know if the name was mentioned at that time. All I can tell you is—this happened, I think it was short of two years ago—I would not be exact unless I referred to the flies—the officer came up to our building and wanted to find out who owned the building and he told us the whole story, and he gave us his idea.

Q. Don't let us discuss it, because, in any event, it was in connection with that that you heard Reles' name mentioned?

Mr. Turkus: Objected to as already answered and gone into in detail.

The Witness: I am not certain.

Q. That is your best impression at this time, isn't it?

A. I cannot answer that. I might answer you one way or another.

Q. I am not trying to quibble; I am trying to see if you can recall from my questions certain things. When I asked you a minute ago as to where you heard Reles' name mentioned, you said it was in connection with dead bodies, didn't you?

A. No, sir, I don't believe I did.

Q. Didn't you then say that the policeman had come to [fol. 1879] you and had discussed with you about it?

A. Yes, sir, he told me a body was found.

Q. He had a conversation, without going into it?

A. Yes, sir. But I don't believe he mentioned any names other than the type of murder it was.

Q. After you had heard this name of Reles, you read certain articles in the paper concerning it?

Mr. Turkus: I object. The juror has not said he heard the name of Reles under those circumstances.

Mr. Rosenthal: He said he heard it only he can't remember where he heard it.

The Court: He answered you he read the name of Reles somewhere but does not know where.

Q. Have you any idea as to whether or not you read any articles in the *Mirror* in which Reles' name was mentioned?

A. Unless I picked the *Mirror* up in the subway.

Q. Of course you would know, if you have a habit of picking the *Mirror* up in the subway.

A. I have.

Q. Have you any recollection whether or not you ever picked a *Mirror* up in the subway and whether you read any article in the *Mirror*?

A. No.

Q. Have you any recollection as to whether or not you ever read anything in any newspaper, any article, in which was mentioned the name of one or more of these defendants?

A. At one time or another I would say yes.

[fol. 1880] Q. Have you any idea as to what particular paper you read, regarding them?

A. As I understand, I buy the *Tribune* in the morning and the *Sun* in the afternoon, and occasionally the *Telegram*.

Q. And in addition to that reading matter you just told us about, you pick up other papers in the subway?

A. Yes, when I leave the train.

Q. Now, you made another statement, I believe, to Mr. Turkus in answer to a question in which he asked you whether you were familiar with the candy store, which I think he said was situated at Saratoga and Livonia Avenue, and you said in the course of your going to and from the house to take the car, you were familiar with that particular corner?

A. I know the store.

Q. He also asked you a question as to whether when passed that corner where that candy store is, whether you saw people congregating around the corner there at times, and you said you did.

A. Yes, it was a bus stop.

Q. You added to it there was a bus stop there also?

A. Yes, sir.

Q. Assuming that it is the contention of the District Attorney, brought out by somebody here, an accomplice, so-called, or other person, that one or more of these defendants stood around that particular corner, and that one or more of these people whom he may call—would your [fol. 1881] knowledge of that particular corner lead you to give greater weight to the evidence than you would otherwise give, because you knew that corner?

A. I don't know how to answer that.

Q. Of course, if you cannot, you cannot; I am asking for the operation of your mind.

A. I know every block there.

Q. You know every block; you know the situation as it exists there?

A. Yes, sir.

Q. The Court will charge you that in all cases your knowledge, your decision as to the guilt or innocence of any person must come from what you find out under oath and learn under oath from the mouths of witnesses.

A. Yes, sir.

Q. Now then, will the fact that you have a particular knowledge, if it develops in this trial, and I don't know what will develop, you understand?

A. Yes, sir.

Q. The only thing I can direct myself to are the questions which the District Attorney asks.

A. Yes, sir.

Q. He asked you about the candy store and people hanging around in front of it.

A. Yes, sir.

Q. If it develops in this trial that what he asked you has some significance, which I do not know of at this time, would your knowledge of that particular corner be of such a nature that you would supply that knowledge and not confine yourself to the testimony of witnesses, and be influenced by your knowledge?

A. I would have to be guided by the Court.

Q. I know these questions are hard, but as different [fol. 1882] conditions arise I must ask different questions. What I am trying to find out is, you know that in any case the jury sitting in the box here listen to what the witnesses say under oath?

A. Yes, sir.

Q. Have you ever sat as a juryman before?

A. Yes, sir.

Q. You know that witnesses are called and they swear to a certain condition or certain facts?

A. Yes, sir.

Q. And the basis of your findings is what is told from that witness stand, taking the law as the Judge gives it to you?

A. Yes, sir.

Q. Now, then, the District Attorney has asked you a question about a corner in some crowded locality, and you have admitted you have been on that corner and observed the crowd of people there?

A. Yes, sir.

Q. If it develops in this trial that there is some testimony about a gathering on that street corner by a particular class of people on the side of The People, would your knowledge of that corner be such that you would supply that knowledge and take it in preference to the testimony of the witnesses concerning the condition?

A. No, sir.

Q. Do I make myself clear?

A. Surely.

Q. Now, you understand this is not a question of whether you like an accomplice or don't like him—that was a question asked by the District Attorney.

A. Yes, sir.

Q. We don't care whether you like him or don't like him. [fol. 1883] The point you are to decide is whether a man of that character which he will be depicted to be, having in mind what he is gaining by sitting there and saying he is telling the truth, is one who could ever tell the truth in your opinion.

A. I don't know what you mean by one who could endeavor to tell the truth.

Mr. Turkus: I object to this. It is going into the realm of speculation.

Q. You met different tenants in the course of your travels?

A. All day long.

Q. Do you remember a tenant, in the course of your experience and association, telling you to come back at five o'clock in the evening and he would have the rent for you when you came back at about five o'clock, and then you would not see the tenant for six days afterwards?

Mr. Turkus: I object.

The Court: Sustained.

Q. You have had experiences such as this which have taught you who you can rely upon and who you can believe?

A. Oh, sure.

Q. Outside of tenants, there are other people you come in contact with and you have different means of ascertaining their truth-telling qualities?

A. At times.

Q. When you see an accomplice, so-called, on the stand, whether you like him or not, you understand your duty will be to ascertain whether a man of the particular character [fol. 1884] of that individual is such that he could tell the truth under oath, under any circumstances, in order to judge what weight you will give him?

Mr. Turkus: I object.

The Court: Objection overruled.

By the Court:

Q. Do you consider yourself competent from your experience to judge whether a person tells the truth or not?

A. Yes, sir.

Q. Taking everything into consideration?

A. Yes, sir.

Q. How old a man are you?

A. Forty-two.

Q. I take it you have been for about twenty years engaged in deciding who tells the truth and who does not as a matter of daily occupation?

A. I don't know.

By Mr. Rosenthal:

Q. In any event, putting it as plain as I know how, you realize that the question as to whether a man is telling the truth on the witness stand is one you are to decide?

A. Yes, sir.

Q. You realize, in deciding that, the Judge will tell you that you must—whether you like it or not—view with extreme caution and suspicion the testimony of an accomplice and be very wary?

A. Yes, sir.

Q. That is under any circumstances?

A. Yes, sir.

Q. Having that in mind, will you also take into consideration in judging whether he is telling the truth or not what he may expect to gain by testifying, what crimes he [fol. 1885] may have committed for which he will go unpunished, whether he has been given immunity, the opportunity he has had to talk to others and concoct the details, and all the other facts and circumstances which might aid you in determining the weight you would give his testimony?

A. Yes, sir.

Q. Does the same hold true in so far as—Have you heard me explain to the other men before you came in the box the question about this so-called evidence tending to connect a defendant with a crime?

A. I don't know.

Q. In any event, if the individual or individuals who are called on behalf of The People to furnish this so-called "other evidence tending to connect the defendants" are

people of similar type to the so-called accomplices, will you weigh their testimony carefully and scrutinize it in order to find out what motive, if any, they would have in saying what they do say on the stand?

A. Yes, sir.

Q. If, after weighing it you do not believe their testimony, would you hesitate under those circumstances to find a verdict of Not Guilty, if you do not believe the independent testimony?

A. I don't understand it.

Q. What I mean is this: You know you cannot convict any man on the uncorroborated testimony of an accomplice?

A. Yes, sir.

Q. By now, having heard it said so often, I assume you know that there must be other evidence tending to connect them with that particular crime—that is clear?

A. Yes, sir.

[fol. 1886] Q. If you do not believe this other evidence because of the motive or whatever it might be regarding the person who furnishes it, would you hesitate to say that and to show that fact by bringing in a verdict of Not Guilty?

A. I would.

The Court:

Q. Provided you were so instructed, would you follow those instructions?

A. Yes, sir.

Q. The time may come when the Judge may say that he denies the motion to dismiss and in other words, he allows the case to go to you to decide. The fact that the Judge does that, if he tells you that that raises no presumption in his mind at all, he is only here to determine questions of law, would that fact weigh in your mind against the defendants?

A. No, sir.

Q. The fact that it is left to you?

A. No, sir.

Q. Is there any reason you know of that has not been urged by questioning that would prevent you from being a fair and impartial juror?

A. I don't know.

Q. You are the only one who would know.

A. No.

Q. Your answer is "No"?

A. No, sir.

Q. I notice you hesitated a little bit before.

A. No, sir.

Q. Is there something in the back of your mind which causes hesitation?

A. No, sir, nothing in back of my mind. You ask me the question and I have to think back.

Q. You mean you would try to think back?

A. No, sir, I don't know of anything I may have told you.

Q. You would not bring in a verdict that is not fair?

A. No.

[fol. 1887] By Mr. Rosenthal:

Q. Now, Mr. Hall, I don't want to repeat all these questions. I notice you were listening very attentively.

A. Yes.

Q. Do you understand the questions which I asked?

A. Yes, sir.

Q. If I addressed those same questions to you would your responses have been any different, substantially, from his?

A. They would be the same.

Q. Did you say you had the opportunity of reading any articles concerning these defendants?

A. I have not read any articles; I have seen the headlines, by-products of headlines, maybe, leading up to the article itself.

Q. Was that before you were called for jury service?

A. No, I don't recall seeing anything before I was called for jury service. I have seen comment in the daily papers that I have read since August 4th, I think it was, in relation to the trial.

Q. Were those comments which you read confined to the progress of the selection of jurors, or did they in any wise refer to any article that has been spoken of here as being in the *Mirror*?

A. No, sir; they were very short; they have been in the *Times*; they would merely say that So-and-so was selected.

Q. Other than that, you have read nothing concerning any of these defendants?

A. Yes, sir, that is right.

Q. So, as you sit in the box you have no impression what-
[fol. 1888] ever which would be either detrimental to the rights of The People or to the defendants?

A. No, sir.

Q. There was one other thing I heard you say, which was not explained. You said something about "on the way to the court somebody might chance a remark to you," as I recall your statement. Do you recall having been asked by Mr. Turkus regarding whether you had spoken to anybody or anybody had spoken to you, and you used the words that "Nothing except a chance remark" on your way to court?

A. I do not recall that answer. In substance, the remarks that have been discussed might have been remarks, but there was no discussion.

Q. Have there been any remarks of any character passed through you after you were called to come as a jurymen by anybody on your way to court with respect to any of these defendants?

A. No, sir, only in respect to my jury service.

Q. Is that what you meant when you said there were chance remarks passed?

A. I do not recall making that remark.

Q. Having your attention called to it, because I wrote it down at the time, your mind may not have been in accord with the way I took it, but just turn over in your mind whether or not you have been spoken to by anybody in respect to any of these defendants or in respect to the case itself which you have been called upon for jury service other than the question of how long you might be out.

A. That is the substance of the discussion I had.

[fol. 1889] Q. Nothing has been discussed derogatory to any of the defendants or about the merits of the case itself?

A. That is right.

Q. Do you know any reason that has not been urged by questions that would prevent you from being fair?

A. No, sir.

By Mr. Rosenthal:

Q. Mr. Strober, I notice another man on the panel here who lives at 131 Tehama Street. Are you acquainted with him?

A. No, sir.

Q. The name is John J. Petty. Is that on the same block with you?

A. What is the number?

Q. 131.

A. No, sir, that would be a block apart.

Q. Without repeating the questions, are you in accord with the answers that have been given in respect to the questions which I asked of the other talesmen, or is there any mental reservation in your mind?

A. No, sir, there is no mental reservation in my mind. The only thing is I cannot answer your questions—you asked me whether I agreed with each gentleman—only as to the principles of law. I did not follow them.

Q. Did you follow the questions I asked as to the matter of corroboration and the matter of accomplice testimony and the weight to be given?

A. Yes, sir.

Q. And about the question of the admissions by a man [fol. 1890] who admits he is a criminal, etc.?

A. Yes, sir.

Q. With respect to those particular questions, I am not asking you about anything they said about newspapers or questions that were directed to them personally, merely on the legal questions would your answers be substantially the same if I directed them to you?

A. According to what you asked them, would they take the Judge's law.

Q. I also meant this: I assume that an accomplice will take the stand. Suppose that after he has testified, or while testifying he admitted either by direct or being forced to admit on cross-examination that for this very crime he admits he committed he has had immunity and that for other crimes he has immunity, that he has lied under oath, that he has had association with other witnesses which has given him an opportunity to concoct a story, and a number of other things; would you take all of those things into consideration in determining what force or weight you would give to the accomplice's testimony?

A. I would listen to the accomplice's testimony.

Q. You understand that as far as the accomplice is concerned the Court will charge you that in any case, irrespective of the admission of this character, where an accomplice is concerned his testimony must be viewed with caution and suspicion and the jury must be wary of it?

A. I understand that.

[fol. 1891] Q. That is the reason why I differ between the accomplice and others. When you go to other so-called evidence, I assume you were in court when I explained it, you do not know what the District Attorney may attempt to

prove or what you may judge from his questions, and we must ask questions—now, you will understand by now that unless there is so-called corroborative evidence there would be no case in law?

A. Yes, sir.

Q. You understand the question of corroborative evidence can never be determined by the Judge as law. It must be left to the jury to determine the facts?

A. Yes, sir.

Q. And if this corroborative evidence, so-called, consists of alleged statements or admissions supposedly made by the defendant to this particular witness, and it develops that that witness has committed numerous crimes for which he has never been punished, has denied knowledge of this particular crime, and a number of other things—I will not limit you to any particular state of facts—including his hesitation, maybe, in answering questions, his manner in answering, etc.—would you take that into consideration in determining what weight, if any, you would give to his testimony?

A. Yes, sir.

Q. And if you once determined that by virtue of the motive he had here or the reward which is coming, that he was not telling the truth and there was a doubt as to his telling the truth, would you have the courage to say so in your verdict?

[fol. 1892] A. I would be bound to, and I would also have the courage.

Q. The only reason I use those words is because the District Attorney has asked everybody, "would you have any fear or hesitation?" I used the word "courage," which implies you would not have fear or hesitation.

A. That is right.

Mr. Rosenthal: No challenge for cause by the defense.

Mr. Turkus: Each and every prospective talesman is satisfactory; Mr. Gillespie, Mr. Hall, and Mr. Strober.

Mr. Talley: Mr. Strober and Mr. Hall are satisfactory to the defense. Mr. Gillespie is challenged peremptorily.

(Mr. Hall assumed Seat No. 7 in the jury box, and Mr. Strober assumed Seat No. 8.)

The Court: Call four more talesmen.

(The following talesmen were called for examination: Frank X. Butler, No. 2690; William A. Stephens, No. 2667; Philip Brill, No. 2756; Joseph J. Flanagan, No. 2822.)

The Court: All others may go until twelve o'clock tomorrow:

(Addressing tentative jurors and talesmen in box):

Gentlemen, you may go until ten o'clock tomorrow morning. Please do not discuss the case. Read nothing about it. Do not listen to any discussion about it. Keep your minds open.

[fol. 1893] The Court is recessing at a quarter to seven o'clock, partly because of an engagement which was explained to the Court by Mr. Rosenthal, and, quite properly, because of the recommendation by Dr. Nash that one of the defendants (Capene) shall not be placed under the strain of a later session just now. But the defendants will have to have their dinner, and I assume it is too late to go to the House of Detention. They will have to have their dinner in the pen. Those in charge of the pen, including the officers and extra guard, will wait until after they shall have finished their dinner and have been taken from the building. There must be no dining in restaurants.

Defendants remanded.

(Whereupon an adjournment was taken to Thursday, October 9, 1941, at ten o'clock a. m.)

[fol. 1894] *Peo. v. Louis Buchalter et al.*

Brooklyn, N. Y., October 9, 1941.

Trial Resumed

(All defendants represented by their counsel.)

FRANK X. BUTLER, a talesman, interrogated as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Mr. Butler, you are listed as a clerk. Where are you employed?

A. In the Telephone Company.

Q. (Addressing Mr. Stephens) You are a stock broker in business for yourself?

A. No, sir, I am employed by a member of the Stock Exchange.

Mr. Turkus: I want to find out some of your occupations so that it will take in a lot of questions and I will not waste time.

Q. (Addressing Mr. Brill) Mr. Brill, you are a contractor?

A. Yes, sir.

By the Court:

Q. (Addressing Mr. Butler) Steuben Street, That is in what section of Brooklyn?

A. Near Fort Greene Park.

Q. That is between Nostrand and Marcy?

A. No, sir, nearer Grand Avenue.

By Mr. Turkus:

Q. How long have you lived in that neighborhood?

A. About six years.

[fol. 1895] Q. Where did you live prior?

A. Clinton Avenue, approximately near that.

The Court:

Q. No. 45 School is just about where Steuben Street is?

A. That is right.

Q. Mr. Butler, have you listened to the questions I put to the other jurors while you were here?

A. Yes, sir.

Q. How long have you been with the Telephone Company?

A. About nineteen years.

Q. That takes in all the time you have been engaged in business, or have you had any other employment?

A. The Telephone Company.

Q. Did you go in there when you were a boy?

A. Yes, sir.

Q. You understand we are here trying an indictment for murder in the first degree in which these defendants, Buchalter, Capone, and Weiss, are charged with the murder of Joseph Rosen. Is there anything about the nature of the

charge which would prevent you from rendering full service as a juror?

A. No.

Q. Have you any scruples, conscientious or otherwise, against capital punishment?

A. No.

Q. There may be a lot of questions I may ask you that may not apply to you because of the place where you reside and the business which you are in, but I have to mention it so the other jurors may hear these questions, and if it applies to them they will be able to tell me. In your background, in any way, shape or form, through social contact, [fol. 1896] did you ever come into contact with anybody in the garment industry or clothing industry, or the clothing truckers?

A. No, sir.

Q. Do you know any union officials of the Amalgamated Clothing Workers of America?

A. No, sir.

Q. Is there any familiarity with the name of Weinstein or Katz, officials of the Amalgamated Clothing Company of America, or Philip Orlofsky?

A. No, sir.

Q. May I go along with the understanding that through no business or social contact do you know anyone engaged in the manufacture of clothes, either men's or women's, or in the distribution of clothes through truckers?

A. No, sir.

Q. Have you had any contact of any shape or form in the Brownsville or East New York areas?

A. No, sir, no contact. At one time I held a job and I had to go up to Brownsville.

Q. How many years ago was that?

A. About six or seven.

Q. The only contacts were by seeing representatives of the Telephone Company?

A. Yes.

Q. Does the same apply to the Brooklyn waterfront?

A. I have not been there.

Q. Since receiving your jury notice, did anybody talk to you about the case?

A. No, sir. Casually they asked me what case I was on, but I tried to discourage any talk.

The Court:

Q. Steuben Street begins at Fulton Street?

A. It begins at Fulton, and I am between Willoughby and DeKalb.

Q. May I understand that nobody has discussed the [fol. 1897] merits of the case with you?

A. That is right.

Q. Have you heretofore served as a juror in any case?

A. No, sir.

Q. Will you take the law in this case, if you are selected, exclusively from the trial judge?

A. Yes, sir.

Q. You understand that is the duty of the Judge who presides at the trial, to instruct the jury on the law?

A. Yes, sir.

Q. And it is the juror's duty to apply the instructions on the law to the facts. Will you follow that if you are so instructed, and will you, to the best of your ability, apply the law to the facts in this case?

A. Yes, sir.

Q. May I proceed with the understanding you are in sympathy with law enforcement?

A. Yes, sir.

Q. I must repeat the names of the lawyers who represent the defendants, because I doubt if anybody was in the box at the time I mentioned the names to the other jurors. May I say that the defendant Buchalter is represented by three lawyers, former Assistant District Attorney Barshay, United States District Attorney Wegman, and Mr. Jesse Clinenko. Do you know any of those three?

A. No, sir.

Q. The defendant Weiss is represented by a former Judge of the General Sessions, Judge Talley, by former Assistant District Attorney Cuff, and by former Assistant United States Attorney Murray Kriendler. Do you know any of those?

A. No, sir.

Q. The defendant Capone is represented by Sidney Ro- [fol. 1898] senthal, Mr. Fischbein, and Mr. Rosenberg; do you know any of those?

A. No, sir.

Q. Do you know anyone employed in the law offices of any of those nine?

A. No, sir.

Q. Do you know any member of the bar who specializes in the trial of criminal cases for defendants?

A. No, sir.

Q. Not having sat in a criminal case for the period indicated, you will accept the law exclusively from the Judge, will you, when you are charged that the defendants and all defendants on trial are presumed to be innocent until their guilt is established beyond a reasonable doubt. Will you follow that instruction?

A. Yes, sir.

Q. If you are charged in this criminal trial that no defendant in a criminal case has any burden of proof, that the burden always rests upon the District Attorney, will you follow that?

A. Yes, sir.

Q. That the defendant may sit mute during the trial, he may choose not to take the stand, and that if he does not take the stand, no inference may be drawn against him?

A. That is right.

Q. Will you take that instruction of law?

A. Yes, sir.

Q. In short, will you give the defendants the benefit of every law that the Judge says a man on trial should have?

A. Yes, sir.

Q. The presumption of innocence, the burden of proof, [fol. 1899] the doctrine of reasonable doubt, all the principles of law the Court will give you that inure to the benefit of the defendants on trial—will you endeavor to apply them to the facts in this case?

A. Yes, sir.

Q. Have you heard any discussion about accomplice testimony?

A. As I sat here.

Q. Do you understand that an accomplice is one who was a co-participant in the crime—that he was one of the perpetrators of the crime—one of the guilty perpetrators? Do you understand that?

A. Yes, sir.

Q. In the event that part of the State's case rests upon the testimony of an accomplice, I would like to know if you have any fault to find either with the prosecutor or the prosecution—I will try that again—do you find any fault with the District Attorney of the county, Judge O'Dwyer, who,

in order to solve a murder case, accepts the testimony of one of the men who perpetrated the crime with others, and uses that against them?

A. No, sir.

Q. Do you have any bias or prejudice against the prosecution, part of which rests upon the testimony of an accomplice—do you have any prejudice against a prosecution which uses the testimony of an accomplice against others?

A. No, sir.

Q. In other words, may I understand you have no inherent bias or prejudice as would cause you to shut your ears to testimony of co-participants in the trial simply because he is an accomplice?

A. That is right.

Q. May I understand that your mental state is such that you feel that even a bad man on occasion can tell the truth?

A. Yes, sir.

Q. With respect to weighing the believability you are to give the testimony of an accomplice, will you accept the instructions of law the Judge gives you and apply them to such individual?

A. Yes.

Q. Should the Judge tell you you must view the testimony of an accomplice with care and caution and suspicion, will you do so?

A. Yes, sir.

Q. Will you, if accepted, keep uppermost in your mind that you apply all of these tests to ascertain is this accomplice telling the truth?

A. Yes, sir.

Q. And that a function for applying tests to the accomplice is to view his testimony with care and caution to find out is he telling the truth?

A. Yes, sir.

Q. Will you, if selected, view or find out is this accomplice telling the truth?

A. Yes, sir.

Q. Will you devote your mental faculties to finding out is he telling the truth about a group or combination participation in murder by these defendants and himself?

A. Yes, sir. You mean is he telling the truth about the group?

Q. Yes, if part of the defendants' case rests upon the testimony of an accomplice and is that those defendants

[fol. 1901] joined in the conspiracy to kill the victim named in the indictment, will you use your mental faculties to find out whether the accomplice is telling the truth about the part that the defendants each played in the murder, including the part that the accomplice played?

Mr. Barshay: I object to the question in that form.

Q. Assuming that part of the case of the prosecution rests upon the testimony of one of the men who admits to you he participated in the commission of the murder.

A. Yes.

Q. Will you devote your mental faculties to see if that co-participant, the guilty perpetrator of the murder, tells the truth about the part that each of the defendants played in the murder?

A. Yes, sir.

Q. Will you, in applying all the tests that you apply to the believability of accomplice witnesses, see whether he tells the truth about the guilty combination and the group participation of each and every one of these defendants on trial with him in the commission of that murder?

A. Yes, sir.

Mr. Climenko: Same objection.

The Court: Objection overruled.

Mr. Climenko: Exception.

Q. It may be, after you see the accomplice on the stand, the person who admits he was a conspirator with these men to kill the victim named in the indictment, you may not like him—you may dislike him or have some strong feeling [fol. 1902] against him personally. Do you realize that is not the test—whether you like him or not—but that the test is, Is he telling the truth about each of these defendants and the part they played?

A. I will.

Q. Will you apply all the tests you use to find out yourself. Does he tell the truth about these men on trial and the part each one played in the group or combination and in the killing of the victim?

A. Yes.

By the Court:

Q. What position do you hold?

A. Senior clerk.

Q. What department?

A. Installation department, service. It has to do with the assignment of lines for phone purposes—for work done with the phones.

Q. How long have you been at that?

A. About five years.

Q. And before that?

A. I was an agent for the Company, right-of-way agent, which means the procurement of permits from property owners to allow us to proceed.

Q. How long have you been in the Telephone Company?

A. Going on nineteen years.

Q. I am asking you these questions on account of another man named Butler, who had a very intimate friend who made his life career in the Telephone Company, and I wondered if you are his son.

Q. He lived in the Bushwick section, around Marcy Avenue.

A. No, sir.

[fol. 1903] By Mr. Turkus:

Q. You are married?

A. Yes, sir.

Q. You reside with your wife and family?

A. Yes, sir.

Q. It has been properly said by Mr. Rosenthal, in speaking to the other jurors, that his client, Capone, is here to meet but one charge, the charge in this indictment; that it is the function of the jury to find out is he guilty or innocent of that charge and that charge alone.

A. Yes, sir.

By the Court:

Q. The name of that man was Warner.

A. No, I don't know anybody named Warner.

By Mr. Turkus:

Q. You understand the obligation of the District Attorney is only co-extensive with that—that it is the job of the District Attorney to establish the guilt on this indictment and on this indictment only?

A. Yes.

Q. And that the burden of the District Attorney never shifts?

A. Yes.

Q. Will you, if accepted, devote your mental faculties to finding out are these three defendants at the bar guilty of murder as alleged in this indictment, or are they innocent?

A. Yes, sir.

Q. Will you endeavor to do justice by your verdict if selected?

A. Yes, sir.

Q. Do you understand the function of the jury is to determine the facts in the case and find out whether or not from all the facts in the case the defendants at the bar are guilty or innocent?

A. Yes, sir.

Q. In discussing the problem in the jury room—juries talk these things over, and talk the facts over with one another and endeavor to arrive at a verdict?

A. Yes, sir.

Q. The reason I tell you that is because you said you have never been on jury service before?

A. Yes, sir.

Q. From the contacts you have had in your every-day life, particularly from that part of it where you went out as a representative of the Company, you have had occasion to interview people?

A. Yes, sir.

Q. Will you, if accepted, logically reason out the facts with the other jurors?

A. Yes, sir.

Q. There has been one point brought out by another lawyer who represents the defendant Buchalter. He has pointed out to the other prospective jurors and those already selected, that his client, Buchalter, for crimes he has committed, has been convicted and is paying the penalty for the conviction of those crimes by prison incarceration—in jail. I want to know this: Realizing that such is the case, would you be inclined to relax your duty in this case because Buchalter is serving a term in jail for other crimes he has committed?

A. No, sir.

Q. Would you deviate from a proper decision in this [fol. 1905] murder case because of that?

A. No, sir.

Q. In other words, will you, if accepted in this case, decide the guilt or innocence of Buchalter and the other defendants upon the evidence you receive in this court?

A. Yes, sir.

Q. I mean on the evidence alone—and you will in no wise relax or deviate from a proper or just result because of any present incarceration of the defendant?

A. Yes, sir.

Q. With respect to the allocation of evidence—that may be more or less legal—but the Judge will give you certain rules to apply; as a result of hearing his rule you will obviously see that in some instances a piece of testimony will apply only to one defendant, or to all three. Will you, where it is obvious from the Judge's rule, apply that evidence only to that defendant?

A. Yes.

Q. You will apply every rule that the Judge gives you?

A. Yes, sir.

Q. And you will see, from the rule that the Judge gives you, that obviously a piece of evidence will apply to all three of the defendants; and in that case will you apply it, according to the instructions, against all three?

A. Yes, sir.

Q. Do you know the District Attorney of the county, Judge O'Dwyer, or any Assistant District Attorney on his staff?

A. No, sir.

Q. Should the Judge instruct you as a matter of law [fol. 1906] that there can be no conviction upon the unsupported or uncorroborated testimony of an accomplice, will you follow that instruction of law?

A. Yes, sir.

Q. It will be your job at the same time, possibly, during the trial to find out as a matter of fact whether a certain person is or is not an accomplice. Do you understand that?

A. Yes, sir.

Q. Will you figure that thing out for yourself?

A. Yes, sir.

Q. Obviously, there cannot be any conviction upon the uncorroborated testimony of an accomplice. It may happen, I do not say it will, that the defense lawyers will argue every witness is an accomplice. I want to find out if you

will use your judgment in deciding for yourself what this case is all about?

A. Yes, sir.

Q. I don't say it will happen; it may. But if it does, you will find no fault with it, where there are lawyers for each defendant and they all have a right to a separate consideration of the case?

A. Yes, sir.

Q. The case as against them is being tried together. They are being tried jointly so that the prosecutor, for the saving of time, can try together where the charge is they all participated in the crime together.

A. Yes, sir.

Q. And because each is entitled to a separate consideration, each is, of course, entitled to his own counsel?

A. Yes, sir.

Q. They can have as many lawyers as they want, but it [fol. 1907] may be that the lawyers for the defense may, among themselves, agree upon a certain argument to the jury, and it may be that some of their arguments coincide. Would you, if you heard the same argument repeated three times by defense lawyers, give it three times the weight because you heard it three times?

A. Repeat that, please?

Q. There being three lawyers who will talk to the jury in summation, you not having been on a jury, I wonder if you understand that at the end of all the evidence in the case each defendant has a right to have his lawyer get up and tell the jury how he values the evidence in the case as against his client.

A. Yes, sir.

Q. And when all the defense lawyers are finished the prosecutor tells you how he views the facts.

A. Yes, sir.

Q. These are arguments the defense lawyers give to you and the inferences they draw from the testimony.

A. Yes, sir.

Q. And that is supposed to be helpful and a guide to the jury as to their defendant. It may be helpful or not, but, after all, the job of the jury is to find out, are the defendants guilty or innocent?

A. Yes, sir.

Q. Sometimes—I do not say it will happen, but if it does—where there is more than one defendant on trial—the de-

fense lawyers use the same argument. For example, both may say that "This witness is unbelievable" and "This witness is an accomplice," or some other argument, in which they all stress that side of it, one after the other, to [fol. 1908] the jury. Do you follow me?

A. Yes, sir.

Q. I do not want to be offensive in asking the question to embarrass you, but it may sound like a simple question, but will you keep in mind, even if you hear argument from three defense lawyers on the same point, it is still one argument and is not three times as strong?

A. No, sir.

Q. Will you, if accepted, listen to all the evidence and endeavor conscientiously to apply the rules of law which Judge Taylor gives you to the facts in the case?

A. Yes, sir.

Q. And if at the conclusion of all the testimony and after the defense lawyers have urged their arguments and you have heard the prosecutor draw inferences as he sees them, and you talk the case over with your other jurors, after hearing the law, and your own conscience, your mind, is satisfied beyond a reasonable doubt that the three men at the bar are guilty of murder in the first degree, will you say that in your verdict?

A. Yes, sir.

Q. Will you say it without the slightest hesitation, if you are satisfied of their guilt beyond a reasonable doubt?

A. Yes, sir.

Q. Is there anything I failed to ask or bring out by questioning that would go to your ability to render a verdict that would do justice in this case?

A. No, sir.

By Mr. Turkus:

[fol. 1909] Q. (Addressing Mr. William A. Stephens.) No. 1 Plaza Street, is it? That is in the Prospect Park Section?

A. Yes, sir, right at the Circle.

By the Court:

Q. You live right next to the Union Temple?

A. No, the other side, on the corner of Flatbush, Eighth Avenue and the Plaza.

Q. That is a new apartment house where the riding and driving club was?

A. No, just exactly across the street from the garage, the other side of Flatbush Avenue.

Q. The odd numbers run on the west side?

A. Yes, sir.

Q. And the even numbers on the east?

A. Yes, sir.

Q. Is your apartment house a skyscraper?

A. Yes, sir.

Q. Next to the Montauk Club?

A. Yes, sir.

By Mr. Turkus:

Q. Have you lived there for a number of years?

A. Four years.

Q. Prior to that where did you live?

A. In Bensonhurst section.

Q. Was that in proximity to Bath Beach?

A. Yes, sir.

Q. Did you have any contact in Bath Beach of any kind or nature?

A. Very few.

Q. Did you live in any other district or section of Brooklyn?

A. No, sir; those two.

Q. Alone?

A. Yes, sir.

[fol. 1910] Q. Do you reside with your wife and family?

A. Yes, sir.

Q. Your profession is listed as a stock broker. I think you told me you are employed by some firm in Wall Street.

A. I am employed by a firm that are members of the Stock and Curb Exchange, and I work on the Curb Exchange.

Q. (The Court): What firm?

A. Gude, Windel & Company; members of the Stock Exchange.

Q. How long have you been in that business?

A. Fifteen years.

Q. I think we can go along very rapidly now. Have you any contact in the garment or clothing trade. I take it you have none.

A. My answer would be almost exactly as Mr. Butler's

with one exception: I know a man named Mr. Reid, a broker, engaged in trucking hats between New York and Danbury, Connecticut.

Q. I am interested in the clothing truckers. That is the particular branch of the clothing industry where they take clothes in their unfinished state or in their finished state.

A. No, sir.

Q. You know no one in the clothing or trucking business connected with the Amalgamated?

A. No, sir.

Q. I take it, as Mr. Butler said, you, too, are in sympathy with the enforcement of the law?

A. Yes, sir.

Q. With respect to the nine lawyers who represent the defendants, do you know any of them?

A. No, sir.

[fol. 1911] Q. Do you know the District Attorney of the county, or any Assistant District Attorney personally?

A. No, sir.

Q. Do you know any one engaged in the practice of criminal cases especially?

A. I didn't hear you.

Q. Do you know anybody connected or associated with anybody of the nine lawyers in the practice of the law?

A. No, sir.

Q. Did you hear the discussion I had with Mr. Butler about the testimony of an accomplice?

A. Yes, sir.

Q. Do you understand from the conversation we had, or from the questions and answers, that an accomplice is one of the perpetrators of a crime?

A. Yes, sir.

Q. Do you have any inherent bias or prejudice against an accomplice's testimony which would cause you to reject it under all circumstances?

A. No, sir.

Q. Do you believe—is your state of mind such that even a bad man can tell the truth?

A. Yes, sir.

Q. Will it be your job to find out is he telling the truth about the group or combination participating in the murder by these defendants?

A. Yes, sir.

Q. Will you use your faculties to find that out?

A. Yes, sir.

Q. Will you use common sense and understanding in weighing and applying all these tests to accomplice witnesses to find that out?

A. Yes, sir.

Q. In other words, do you appreciate it is not whether you like or do not like an accomplice or whether you have [fol. 1912] any use or no use for him as an individual, or for any other purpose; the thing you want to find out is, Does he tell the truth about the part that each of these defendants played in the commission of the murder?

A. Yes, sir.

Q. That is the purpose of applying every test that the human mind can figure out that is reasonable or sensible to apply to that kind of witness?

A. Yes, sir.

Q. That is why we look at the testimony of a participant in a crime with care and caution and suspicion to find out is he telling the truth when he implicates himself and others in the commission of a crime?

A. Yes, sir.

Q. Will you keep uppermost in your mind that the inquiry is, no matter what the test is you apply to find out, Is he telling the truth about the complicity of the defendants in the commission of the crime?

A. Yes, sir.

Q. You will be instructed that even if you believe the accomplice, every word he says, that would not be enough to warrant a conviction?

A. Yes, sir.

Q. There must be supporting evidence which is believed by the jury and tends to connect the defendants with the commission of the crime—that will be the instruction on the law, either in words or substance.

A. Yes, sir.

Q. If the Judge should tell you and Mr. Butler, too, that the corroboration or the supporting proof need not go to every single point that the accomplice testifies to, but may be [fol. 1913] deemed to be sufficient by the jury, if believed, when it tends to connect the defendants with the commission of the crime, will you accept that instruction on the law?

A. Yes, sir.

Q. And will you (addressing Mr. Butler)?

A. Yes, sir.

Q. Will both of you endeavor conscientiously to apply that instruction of law to the facts in this case?

A. Yes.

Q. I discussed with Mr. Butler the fact that, as Mr. Rosenthal pointed out, his client and the other defendants are here on the only charge in this indictment, which is the charge of the Rosen murder.

A. Yes, sir.

Q. Do you understand, too, that it is only the obligation and duty of the District Attorney to establish the guilt of the defendants of the Rosen murder beyond a reasonable doubt?

A. Yes, sir.

Q. That he is only bound to establish the guilt on this particular charge beyond a reasonable doubt?

A. Yes, sir.

Q. It has been pointed out by Mr. Buchalter's lawyer that Mr. Buchalter has been convicted of other crimes and is paying the penalty for those convictions by sentence. Would you be inclined to relax or yield from the proper verdict in this murder charge because Buchalter is in jail for some other offense?

A. No, sir.

Q. Will you devote all your mental faculties to finding out, if selected as a juror, whether these defendants at the bar are guilty or innocent of this murder charge?

A. Yes.

[fol. 1914] Q. I take it in your business you have occasion almost daily to discuss matters with reason and common sense with people employed with you, and to analyze and figure things out sensibly and logically?

A. Yes, sir.

Q. Will you, if accepted as a juror, use your common sense and understanding in applying the law of this case to the facts in the case?

A. Yes, sir.

Q. Will you listen to reasonable discussion by the other jurors?

A. Yes, sir.

Q. And will you, by your verdict, endeavor to do justice in the case?

A. I will try to do justice.

Q. Is there anything in your state of mind which would preclude you from doing justice by your verdict?

A. No, sir.

Q. If, after you hear all the evidence in the case, you are satisfied from the testimony that these defendants are guilty of murder in the first degree, you feel that you are satisfied that by the evidence it establishes that in your mind beyond a reasonable doubt, will you pronounce that in your verdict?

A. Yes, sir.

Q. Would you have any fear or hesitation in finding Buchalter, Capone and Weiss guilty of murder in the first degree if the evidence satisfies you of their guilt beyond a reasonable doubt?

A. No, sir.

By Mr. Turkus:

Q. Mr. Brill, are you any relation to Judge Brill?
[fol. 1915] A. No, sir.

Q. What do they call that section in Decatur Street?

A. Bushwick.

Q. Have you lived there for a number of years?

A. About twenty-two years.

Q. Is Jefferson Avenue in the Bushwick section?

A. Yes, sir.

Q. Is there any occurrence which took place in the neighborhood of Jefferson Avenue fresh in your mind?

Mr. Barshay: I object.

Mr. Turkus: I withdraw it.

Q. (The Court): Near what street is that?

A. Between Bushwick and Evergreen Avenue.

Q. (The Court): That is a traffic street right there that takes traffic off Cooper Avenue?

A. I believe so.

By the Court:

Q. Cooper Avenue goes out to Queens?

A. Yes, sir.

By Mr. Turkus:

Q. Are you married?

A. Yes, sir.

Q. Do you reside with your wife and family?

A. Yes, sir.

Q. Is this a private house you live in?

A. A two-family.

Q. I believe as I went down the line discussing vocations that you told me you were a contractor in business for yourself.

A. Yes, sir.

Q. What is it you do?

A. The last five or six years I have been doing reconditioning work for the H. O. L.

[fol. 1916] Q. What did you do before that?

A. General contractor, electrical contractor.

By the Court:

Q. What is the name of your firm?

A. Phil Brill.

Q. What is the address?

A. 1070 Decatur Street.

Q. I mean the business address.

A. I operate from my own home.

Q. The name you use as a contractor is your first or last name?

A. Phil, for short.

Q. I thought it was a trade name.

A. No.

By Mr. Turkus:

Q. Did your business in the past bring you in contact with electrical unions?

A. No, sir.

Q. Do you have any contacts now with any officials in any unions in the building trade?

A. No, sir.

Q. Did you hear me discuss with the other jurors about any contract or connections with any union officials, unions in the garment trade or clothing truckers—does that apply to you? Have you any connection whatsoever with them?

A. No, sir, not with me.

Q. Or with someone else?

A. I know some people in the garment district.

Q. Who are manufacturers of clothing?

A. Yes, sir.

Q. Do you know many of them?

A. I know one.

Q. What is the name?

A. Rosenthal.

[fol. 1917] Q. Do you know where his place is?

A. No, sir.

Q. Has he a trade name under which he manufactures garments?

A. Well, he works as partners—some special partnership, I think, I am not sure.

Q. Do you know a Mr. Edelstein?

A. Yes, sir.

Q. He was a partner of Rosenthal's.

A. Yes, sir.

Q. Do you know other people who manufacture clothes in the district?

A. Yes, sir.

Q. Do you see them socially?

A. No.

Q. After the investigation of Mr. Dewey commenced in the district in connection with certain people in the garment business, did you read about it?

A. I might have. It is not clear in my mind.

Q. Did you hear anything discussed by anybody about the Dewey investigation, any of your acquaintances in the garment district?

A. No, sir.

Q. Did you ever hear any discussion at all by anyone about the Dewey investigation?

A. It is so long back I don't recall it now.

Q. Did you, more recently, when the O'Dwyer investigation began, hear any discussion about that investigation?

A. No, sir.

Q. Since you received your jury notice did anybody, particularly any of these people you know in the garment district, speak about the names of Lepke or Gurrah?

A. No, sir.

Q. Did you ever hear the defendants' names mentioned?

[fol. 1918] A. Yes, sir, not Gurrah, but Lepke.

Q. Was it in conversation with people you knew in the garment district?

A. No, sir.

Q. With others?

A. Yes, sir.

Q. Was it by way of newspaper reading?

A. It might be.

Q. Is there any impression in your mind about a man who bears the name of Lepke?

A. What impression?

Q. Have you an impression in any respect about him from what you have heard or read?

A. I know of Lepke.

Q. Do you have any impression of him that is detrimental to him?

A. Not in this case.

By the Court:

Q. Are you active politically?

A. No, sir.

Q. Doesn't Bernard Christ, Jr. have a building at that corner?

A. That is on Schafer and Bushwick.

Q. He owns that building. Now, did you do any business with him in connection with reconditioning?

A. No, sir.

Q. He does a Federal loan business.

A. I have not any contact with him.

By Mr. Turkus:

Q. Do you get your business through banks?

A. Through the last five or six years it has been from loan associations; I am on their list.

Q. Do I understand it correctly—this is a matter of curiosity—the Home Owners' Loan sends you certain work [fol. 1919] to bid on and you bid, with others, on the building work that the Home Owners' Loan wants done, by way of repair work and reconditioning?

A. Yes, sir.

Q. Do you see people who have business in the garment district frequently?

A. No, sir.

Q. These people you do know socially, do you visit at their homes?

A. One belongs to the family circle, and I see him perhaps every two months.

Q. Do you know any people who reside in the Brownsville or East New York areas?

A. Yes, sir.

Q. Do you know them socially?

A. My brother lives there, and my aunts.

Q. Have they lived there for a number of years?

A. Yes, sir.

Q. What part of that section does your brother live in?

A. On Hendrix Street.

Q. Where does you aunt live?

A. She lives there.

Q. Do you know the nearest cross-street to that?

A. I believe it is Blake Avenue.

Q. Is Blake Avenue and Hendrix Street near Blake Avenue and Sutter?

A. It is not far.

Q. Is the name of Harry (Pittsburgh Phil) Strauss familiar to you?

A. No, sir.

Q. Or that of Martin (Bugsy) Goldstein?

A. No, sir.

Q. Or Abe Reles?

A. No, sir.

Q. Did you read anything about the Rosen murder when [fol. 1920] it occurred in 1936?

A. No, sir.

Q. Did you hear the names of any of the defendants discussed by anybody in the Brownsville or East New York area when you were in that district visiting?

A. No, sir.

Q. Do you know where Livonia and Sackman Streets are?

A. Yes, sir.

Q. Livonia and Saratoga Avenues?

A. Yes, sir.

Q. Is your mind clear about the candy store on Saratoga and Livonia Avenue?

A. No, sir.

Q. Have you been in such a store?

A. No, sir.

Q. Do you know where the Interboro and the B. M. T. station is at VanSinderin Avenue, particularly where they have a railroad passover?

A. Yes, sir.

Q. At any time while you were in that area, particularly since you received your notice, did anybody mention the

names of any of the defendants or any persons who were under investigation by Judge O'Dwyer?

A. No, sir.

Q. Is that impression of the man known as Lepke still in your mind—you said it did not go to his guilt or innocence in this case, I think—but whatever impression you had, is it still in your mind?

A. In what respect?

Q. Whatever the impression is, is it presently in your mind and have you retained that impression—have you had it for some time back?

A. Yes, sir.

Q. Having had it for some time back, is it still with you? [fol. 1921] A. Yes, sir.

Q. Did you hear my discussion with Mr. Butler and Mr. Stephens, that discussion we had about accomplice testimony? Is there anything that they have said to me or I have said to them about accomplice testimony that you find different?

A. No, sir.

Q. I presume you have a state of mind in which you understand that even a bad man can tell the truth?

A. Yes, sir.

Q. You have no bias or prejudice either against the prosecutor or the prosecution for using or accepting that kind of testimony?

A. Correct.

Q. In other words, you find no fault with the prosecutor who, in endeavoring to solve a murder, accepts the testimony of an accomplice?

A. No, sir.

Q. Will you, in applying all the tests that the Judge will give you to apply, apply the rule of caution, care, and suspicion, keeping in your mind uppermost that your job as a juror is to ascertain, Does this accomplice tell the truth about the participation of each of these defendants in a murder case?

A. Yes, sir.

Q. And will that be your job if selected?

A. Yes, sir.

Q. Do you believe, as they do, that it is not a question of whether we like or dislike an accomplice, it is a question of whether or not he speaks the truth as to the Rosen murder?

A. That is right.

[fol. 1922] Q. As has been pointed out by Mr. Buchalter's lawyer, if it should appear from the testimony that Buchalter is also known as Lepke, and that he has been convicted of other crimes and is presently paying the penalty for these illegal acts, would you relax your duty as a juror to ascertain his guilt or innocence on this charge?

A. No, sir.

Q. Would you deviate from a proper result?

A. No, sir.

Q. Will you, in considering his guilt or innocence of this charge, exclude from your mind that he is paying a penalty for other offenses?

A. Yes, sir.

Q. If accepted as a juror, you will find out, Is he guilty of this murder too? Do you understand that?

A. Yes, sir.

Q. It has been pointed out by Mr. Barshay that he was guilty of other offenses—I do not want you to do anything to prejudice his rights, but will you give him every reasonable right and safeguard under the law?

A. Yes, sir.

Q. By the same token, I don't want you to give him any sympathy, because he is entitled to no sympathy for having committed other offenses for which he is in jail; you understand that?

A. Yes, sir.

Q. In other words, if you are accepted, can The People of The State of New York understand that you will render a verdict that will be a just verdict?

A. Yes, sir.

Q. A verdict that will reflect justice?

A. Yes, sir.

Q. With respect to the allocation of evidence, that may be a legal form which you may or may not be familiar with—[fol. 1923] the Judge will give you rules of law on the evidence in which he will say that a certain piece of testimony will apply to a certain defendant—you do not prove a case through one witness—one witness may speak about the act of a single defendant and under the instructions of law that obviously can be applied only to that defendant about whom the witness speaks?

A. That is right.

Q. It may be, in the course of the testimony, that one or more of the witnesses may, in their testimony by common sense obviously apply to each and every defendant in the case.

Mr. Barshay: I object.

The Court: After all, isn't that a question that is properly for the defense?

Mr. Turkus: I want to find out because of a statement of the allocation of evidence where under the law you give them rules to apply.

The Court: It is not practical to question jurymen even on the basis of a hypothesis. The most the jurymen should be obliged to state is whether he will take the law from the Court and apply it as to the facts.

Q. In other words, if you are a juror in the case, will you use common sense and understanding in applying the rules of law that the Judge gives you to the testimony which you hear in court?

A. Yes, sir.

Q. Will you use common sense and understanding in [fol. 1924] finding out the sole issue in the case—there is only one thing to find out?

A. Yes, sir.

Q. Are these defendants and each and every one of them guilty of murder as charged in the indictment?

A. Yes, sir.

Q. Will all of your faculties be devoted to ascertaining that—are they guilty of this murder or are they innocent of this murder?

A. Yes, sir.

Q. Is there anything concerning which I failed to make any mention or receive any response from you because I did not question you about it, that would go to your ability to render justice in this case?

A. No, sir, I know Phil Kapakov, who was an accountant for Buchalter.

Q. Is he one of your close friends?

A. He was in the same lodge.

Q. When you say "lodge," is that some fraternity?

A. Yes, sir.

Q. Are you still members of that fraternity?

A. No, sir, I have not seen him in years.

Q. At the time you knew this man Kasof—

A. Kapakov, Philip.

Q. Did you have any talks with Philip Kapakov about Buchalter?

A. No, sir, he worked for Buchalter.

Q. Do you know whether he is presently his accountant?

A. No, sir, he may be.

Q. Do you know whether or not he is connected or has anything to do with some clothing concern in Baltimore?

[fol. 1925] Mr. Climenko: I object to that; it has nothing to do with this case.

Mr. Turkus: The juror has told me in all frankness when I asked him about anything I had not brought out that he was a lodge brother of Philip Kapakov, an accountant for Buchalter.

Mr. Climenko: Eight years ago. My objection goes only to the specific question; it is not binding.

The Court: Objection overruled.

Mr. Climenko: Exception.

A. I don't know.

Q. Did you ever hear of the name of Raleigh Clothes, from Mr. Kapakov?

Mr. Climenko: I object.

Q. Does your lodge meet at the temple?

A. Yes, sir, Masonic, the James W. Huston Lodge.

Q. Did you and Mr. Kapakov ever discuss the matter of Kapakov's working for Buchalter?

A. No, sir.

Q. I am puzzled as to how you came to know that.

A. At the time of Kapakov's trial I heard it through my friend—one of my friends,—one of my friends.

Q. How long ago would that be?

A. About three or four years ago.

Q. The reason I ask you is because it is rather unusual for a person to know another person's business connections unless there is something that brings it out rather conspicuously.

[fol. 1926] A. There was a trial in this case in connection with the Buchalter case.

Q. Then it is just a matter of gossip?

A. I believe it was in the newspaper.

Q. That did not influence you in any way?

A. No, sir.

Q. How close are you attached to him?

A. I have not seen him in eight years.

Q. Were you very close then?

A. No, sir, just a lodge member.

Q. I think you have been exceedingly frank in directing it to my attention, Mr. Brill. Is there anything about that association that you have had, which you have explained, only as a lodge brother, that would prevent you from rendering a just verdict, that would be just to the People of the State of New York and to the defendants?

A. No, sir.

Q. You can render a fair verdict?

A. Yes, sir.

Q. You can be fair and just to your duty as a juror if accepted?

A. I can.

Q. Then we can go along with the understanding there is nothing I failed to bring out by questions which would affect your ability to render a fair, just, and true verdict in this case based upon your oath of office, if selected?

A. Yes, sir.

JOSEPH J. FLANAGAN, a talesman, was examined as to his qualifications.

[fol. 1927] By Mr. Turkus:

Q. They list you as living on 16th Avenue.

A. Yes, sir.

Q. Is that the part they call Bath Beach?

A. I think that is known as Maplewood.

Q. That is in Brooklyn?

A. Yes, sir.

Q. Is that 64th Street?

A. Between 64th and 65th Street on 15th Avenue.

Q. Have you lived there for years?

A. Two years.

Q. Before that where did you live?

A. 101 Lafayette Avenue, downtown.

Q. Had you lived in that section for some time?

A. One year.

Q. Before that where did you live?

A. Bay Ridge, 445 Fifty-first Street.

Q. Do you reside with your family?

A. Yes, sir.

Q. Your business is listed as electrical. By whom are you employed?

A. The Public Service Electrical.

Q. Have you been employed there for some time?

A. About four years.

Q. Prior to that what did you do? Electrical work?

A. I was employed by the City department.

Q. I take it your work requires some sort of special or [fol. 1928] preliminary training?

A. Yes, sir.

Q. You have had that preliminary training?

A. Yes, sir.

Q. I don't suppose you have had any contact by way of business or otherwise with the needle or clothing trade, or the clothing truckers' business?

A. No, sir.

Q. Or that you have ever had any?

A. No, sir.

Q. With respect to any individuals who do business in those districts or in those industries, have you had any contact or do you know any?

A. No, sir.

Q. Including the Brownsville or East New York section?

A. No, sir.

Q. Or the Brooklyn waterfront?

A. No, sir.

Q. (Addressing Talesman Brill.) I forgot to ask you about the Brooklyn waterfront.

A. No, sir.

(Examination of Mr. Flanagan continued by Mr. Turkus.)

Q. May we go along, Mr. Flanagan, with the understanding, you know none of the officials connected with any clothing industry or any clothing trucking industry?

A. Yes.

Q. You have not had contact of any kind, nature, or description, either in the industries or districts we have described?

A. No, sir.

Q. I take it that you are in sympathy with law enforcement?

A. Yes, sir.

Q. Since receiving your notice, has anybody spoken to you about the case?

A. Just casually, nothing in detail.

[fol. 1929] Q. Were those casual discussions in reference to prospective service on a jury which may take time, if selected, in connection with your employment or home, or was it some other discussion?

A. At home.

Q. Was that in regard to prospective service?

A. Well, yes, not in detail, just a casual remark, more or less in a joke, about public service.

Q. At any rate, since you received your notice, nobody has tried to tell you anything about the defendants or anything about the case?

A. No, sir.

Q. I have mentioned the names of nine lawyers representing these defendants. Do you know any of them or anyone connected with the practice of law?

A. No, sir.

Q. Do you know the District Attorney, I mean Mr. O'Dwyer, personally, or any member of his staff?

A. No, sir.

Q. Do you know any lawyer who specializes in the defense of criminal cases?

A. No, sir.

Q. Have you served before?

A. 1920.

Q. Was that in a civil case?

A. A civil case.

Q. You have had no experience in criminal cases?

A. No, sir.

Q. Will you, as the other prospective jurors indicated they would, take the law exclusively from Judge Taylor in every aspect of the case?

A. Yes, sir.

Q. Will you endeavor, conscientiously, to apply the law that Judge Taylor gives you to the facts in this case?

[fol. 1930] A. Yes, sir.

Q. Will you endeavor, conscientiously, to ascertain by your verdict, are these defendants guilty or are they innocent of the crime charged in the indictment?

A. Yes, sir.

Q. Now, did you hear the talk about accomplice testimony which we had?

A. Yes, sir.

Q. Do you differ with any of the three gentlemen who have been questioned before you in any of their answers?

A. No, sir.

Q. If I questioned you would you make substantially the same answers?

A. Yes, sir.

Q. You understand the test to be applied to ascertain whether or not accomplices tell the truth to the part that each defendant played in the commission of the crime?

A. Yes, sir.

Q. It is not whether we like or dislike accomplices, but, is he telling the truth? We are here to find that out.

A. Yes, sir.

Q. Your state of mind is such that you appreciate even a bad man on occasions can tell the truth?

A. Yes, sir.

Q. And you have no bias or prejudice against the prosecutor or against the prosecution of an indictment where a murder is broken from the inside and the testimony of accomplices is accepted?

A. That is right.

Q. If accepted will you use all of your mental faculties to find out is the accomplice in this case telling the truth about a group or combination, the participation of these [fol. 1931] defendants and himself, in murder?

A. Yes, sir.

Q. There will be certain rules of law given you by Judge Taylor with respect to the burden of proof, the presumption of innocence, the fact that the defendants need not take the stand, and if they do not no unfavorable inference may be drawn against them, and other rights that every defendant in a criminal case must have. You see, the law is that whether a man is rich or poor, weak or strong, no matter what his station in life may be, when he is at the bar of justice on a criminal charge there are certain rights and safeguards the law says every person accused of crime must have.

A. Yes, sir.

Q. When the Judge tells you what those things are, will

you use your common sense and understanding in applying those principles to this case?

A. Yes, sir.

Q. And give each defendant the benefit of every law in the land that they should have?

A. Yes, sir.

Q. Will you bear uppermost in your mind at all times that our inquiry here of the jury is to find out whether the three defendants are guilty or innocent of murder?

A. Yes, sir.

Q. No man is guilty until the jury finds him guilty beyond a reasonable doubt, you understand that?

A. Yes, sir.

Q. Do you understand we do not speculate as to a man's rights in a criminal case—the duty is on the District Attorney by evidence to establish guilt beyond a reasonable doubt?

A. Yes, sir.

[fol. 1932] Q. Do you understand, when I put the questions to you that your job is to find out, are these three defendants guilty or innocent?

A. Yes, sir.

Q. You have no misunderstanding about that?

A. No, sir.

Q. It has been pointed out by Mr. Rosenthal that his client is here to meet only one accusation charged in this indictment, you understand that?

A. Yes, sir.

Q. And by the same token do you understand that the duty of the District Attorney is co-extensive only with that to establish guilt beyond a reasonable doubt of the murder charge in this indictment, and that is all?

A. Yes, sir.

By the Court:

Q. You are just off the Borough Park section?

A. Just about, yes, sir.

Q. You are between Borough Park and that section where the Street Cleaning Department has a stable or a barn—the Street Cleaning Department garage is on 60th Street and 16th Avenue, and you are on 64th?

A. Yes, sir.

Q. What street is that?

A. That crosses 60th Street at about 16th Avenue; there is the Culver- there and the freight line runs underneath.

Q. New Utrecht Avenue crosses diagonally in the immediate neighborhood?

A. It crosses 16th Avenue at about 71st Street I think.

Q. And the section I speak of begins around 71st Street?
[fol. 1933] A. Yes, sir.

Q. That is the Street Cleaning Department plant?

A. Yes, sir.

Q. You are an electrical designer for what?

A. Public Service Companies and the Electric of Newark, New Jersey.

Q. How long have you been connected there?

A. The present employment I have been for four years; prior to 1931 I was seven years there.

Q. That is the Newark office?

A. Yes.

Q. That is a very big job you have?

A. I am responsible for designing, especially now that the business program is springing up over night.

The Court: Do not start that; I am only trying to measure your qualifications as to the making of a good juror.

By Mr. Turkus:

Q. You are to be charged as to the law, either in words or substance, that there can be no conviction upon the unsupported testimony of an accomplice, no matter how believable that testimony may be.

A. Repeat that.

Q. You may be charged by the Court that that is the law, that even though you believe everything an accomplice says, if that was the only evidence in the case the Judge would direct you that you would have to acquit the defendants.

A. Yes, sir.

Q. Would you follow the instructions on the law? Should the Judge tell you there can be no conviction on the unsupported [fol. 1934] testimony of an accomplice, will you accept that?

A. Yes, sir.

Q. And the Judge will also tell you in words or substance—he may not use the same language as the prosecutor does—but should he tell you that corroboration of unsup-

ported evidence need not go to every single point of the accomplice's testimony—do you follow me?

A. Yes, sir.

Q. And that it may be found to be sufficient by the jury if the supporting evidence is believed and if it tends to connect the defendants with the commission of the crime?

A. Yes, sir.

Q. If he tells you that, will you endeavor to apply that instruction of law to the facts in this case?

A. I will.

Q. As I discussed with the other lawyers, you may or may not hear arguments by them in their summation—May I understand as I go along, if you hear the same argument repeated three or more times, it is still only one argument?

A. Yes, sir.

Q. And it does not deprive any defendant of separate consideration of the facts; under the jury system where a crime is charged to have been committed jointly, the men charged with the commission of the crime are tried together; nevertheless, the Judge will instruct you that each one has a right to have a separate consideration of the facts as they apply to him, at the hands of the jury?

A. Yes, sir.

Q. Will you use the rules of law the Judge gives you as to the application of the testimony as against the defendants, whether it applies to one, two, or three?

A. Yes, sir.

[fol. 1935] Q. Is there anything I failed to bring out by questioning which would go to your ability to be a fair juror, to render a verdict that will do justice?

A. I have read some articles in the paper prior to my coming as a juror.

Q. Let me tell you this, as you are seated here, do you understand now that the burden of proof is upon the District Attorney to establish guilt beyond a reasonable doubt?

A. I do.

Q. To establish guilt in a criminal case, it is the burden of the District Attorney to establish that guilt by believable evidence in court?

A. Yes, sir.

Q. Of course, I take it you understand that no District Attorney will take a newspaper or the words in a newspaper, and submit them to you or to a jury, in lieu of proof?

A. That is right.

Q. I take it you understand, at least, if the Judge charges you, that a defendant has no burden in a criminal case to establish anything—he does not have to prove his innocence—the burden is upon the District Attorney to establish guilt beyond a reasonable doubt—you will have no difficulty in following that?

A. No, sir.

Q. Let me go a step further. The People of the State of New York and the defendants on trial here are entitled to have the case disposed of only on the evidence in the court-room.

A. Yes, sir.

Q. Not on any outside consideration, either of sympathy [fol. 1936] or prejudice—that would not be fair—you have to prove the guilt of the defendants by evidence.

A. Yes, sir.

Q. You have worked—I think you discussed with the Judge the type of work you have been doing.

A. Yes, sir.

Q. You have been doing that type of work for a number of years?

A. Yes, sir.

Q. Have you that kind of a mind—I do not want to be offensive—have you that kind of a mind that you can lay aside impressions you got in the newspapers and do your job as a juror in this case and decide the guilt or innocence on what you hear in the court-room?

A. Yes, sir.

Q. Should I satisfy you by evidence in the case that there are three guilty men in this court-room, Capone, Buchalter, and Weiss, will you say so in your verdict?

Mr. Barshay: Will you include “beyond a reasonable doubt”?

By Mr. Turkus:

Q. Beyond a reasonable doubt.

A. Yes, sir.

Q. You know when I am talking to you I mean “guilty beyond a reasonable doubt”—no speculation or wish—it is something you have to have in your mind from the evidence to satisfy you beyond a reasonable doubt.

The Court: Will the juror follow the instructions of the Court as to what is meant by a reasonable doubt?

The Witness: Yes, sir.

Q. In talking to you, I mean, if you are satisfied, under [fol. 1937] the instructions on the law, that the District Attorney has met the burden and established their guilt beyond a reasonable doubt, will you say that in your verdict without any fear or hesitation?

A. I will.

Mr. Turkus: I understand several of the men in the jury box would like a five-minute intermission so they can attend to certain matters.

The Court: We will take a ten-minute recess. The defendants are remanded. Let the jury pass out first.

(At 11:40 a. m. a ten-minute recess was taken. The tentative jurors and talesmen were admonished as to their demeanor.)

After Recess—Trial Resumed—(12 noon)

(The jury and the defendants returned to the court-room and the questioning of Mr. Flanagan was resumed.)

By Mr. Cuff:

Q. In passing, I just want you to understand that I am interested in one of these three defendants, that is, Emanuel Weiss, so I just want to question you as to him. I think I understood you to say, in answer to one of the questions asked you, that you had an impression, that you thought you could disregard it if evidence of proper weight were submitted.

A. Yes.

Q. You had that impression ever since you sat in court, fol all the time you sat in court, as I understand?

A. Yes, sir.

Q. And this impression is unfavorable to the defendants, [fol. 1938] or some of them, I assume?

A. Slightly. I would not say detrimental.

Q. It is an impression you gained from reading articles in the paper?

A. Yes.

Q. How long would you say you have held that impression?

A. Before receiving my jury summons.

Q. How long would that be?

A. About three months.

Q. It is still in your mind?

A. Slightly, yes, sir.

Q. It is one which you said yourself you would require evidence of proper weight to remove?

A. Yes, sir.

Q. Of course, you know that we are here to inquire as to the frame of mind of each one of the jurors selected.

A. Yes, sir.

Q. Now, might I ask which one of the papers or what papers you read?

A. The Journal-American as a rule, the Eagle, and The Mirror, which I pick up sometimes at home.

Q. Only once?

A. Only once or twice.

Q. You read the article in The Mirror?

A. I read the articles casually.

Q. Mr. Flanagan, I asked you if you read the articles in the Mirror.

A. Yes.

Q. Did they help to form this impression you have?

A. Yes.

Q. There were special articles that related to this particular case, weren't there?

A. They were.

Q. These articles helped you form this unfavorable impression you have which you referred to in your answer to [fol. 1939] Mr. Turkus?

A. Yes.

Q. So, if selected in this case as a juror, you will have to have evidence to remove that unfavorable impression, will you not?

A. I believe I will.

Q. That is your honest impression?

A. Yes, sir.

Mr. Cuff: Challenge for cause.

The Court: Try the challenge.

JOSEPH J. FLANAGAN, residing at 6407 Sixteenth Avenue, Brooklyn, New York, No. 2822, was then sworn and examined on the challenge by Mr. Cuff and testified as follows:

By Mr. Cuff:

Q. Before you were sworn I asked you certain questions and you made answers to them.

A. Yes, sir.

Q. Would your answers to those questions be the same if I propounded them to you again now that you have been sworn?

A. Yes, sir.

Mr. Cuff: I press the challenge.

By Mr. Rosenthal:

Q. You have been sitting in the court-room here off and [fol. 1940] on listening to remarks both by counsel for the People and for the defendant?

A. Yes, sir.

Q. In respect to the law as it exists now?

A. Yes, sir.

Q. You have heard the Judge on a number of occasions instruct or state to the jury what the law of our State is?

A. Yes, sir.

Q. Notwithstanding that fact, the answers which you made to Mr. Cuff were true and correct as to your present frame of mind?

A. Yes, sir.

Q. And your present frame of mind is such that your impression or opinion goes to the guilt or innocence of the defendants in this case here?

A. Yes, sir.

Q. That is due to the fact that you have read articles of a nature that were addressed to the guilt or innocence of the defendants in this trial?

A. Yes, sir.

Q. There isn't any question that is your honest state of mind?

A. Honest state of mind.

Mr. Barshay: No questions.

By Mr. Turkus:

Q. Mr. Flanagan, you said in response to Mr. Cuff's questions that you read the *Mirror* once or twice?

A. Yes, sir.

Q. Did you say you read the article casually?

Mr. Rosenthal: I object to the leading of this witness and putting the answer in his mouth.

The Court: Objection sustained.

[fol. 1941] Q. What did you do—did you say in response to Mr. Cuff's question that you read the articles in the *Mirror* casually and did not digest them?

Mr. Cuff: That is objected to as leading and suggestive.

The Court: Is that your understanding of the examination?

Mr. Turkus: Yes, he said that to Mr. Cuff.

By the Court:

Q. Was that your answer?

A. It was. Mr. Cuff stopped me.

By Mr. Turkus:

Q. Mr. Cuff stopped you when you said yes and you wanted to go into details?

A. Yes, sir.

Q. What were the details you wanted to go into?

Mr. Cuff: I object.

The Court: Overruled.

Mr. Cuff: Exception.

Q. Tell me what you wanted to say.

A. I was going to say I did not go into details enough in the article to have a substantial effect on my impression.

By the Court:

Q. Was it concerning a murder case?

A. I believe it is.

Q. Do you recall definitely whether it did or not?

A. Not definitely, no.

Q. Are you anxious to get off the jury because of business?

A. No, sir, that impressed my opinion, but I could

[fol. 1942] dispel my impression and have willpower enough to give a fair decision in the case.

Q. It had no bearing on the trial of this case?

A. No, sir.

By Mr. Turkus:

Q. I believe you started to tell your lawyer—stop me if I am not right—you did not read enough of the *Mirror* article to form any impression at all.

A. No, sir.

Q. Is that true?

A. That is true.

Q. You were referring to something else you read—did you read something else?

A. As I say, I did not read it in detail; I am not sure whether it had to do with this case or not.

Q. Whatever reading you had is so hazy in your mind you don't remember whether it mentioned the Rosen case or not?

A. No, sir.

Q. There is nothing you have read in the *Mirror*, at least that you can recall, that had anything to do with the Rosen case?

A. No, sir.

Q. That, of course, you understand, is the charge that we are trying here?

A. Yes, sir.

Q. The murder of Rosen?

A. Yes, sir.

Q. Did I understand you correctly when you said to Mr. Cuff that you had read some articles in the *New York Journal-American*?

A. Yes, sir.

Q. Were those articles that dealt with the life of [fol. 1943] Judge O'Dwyer?

A. Yes, sir.

Q. What articles you read, they were confined to the career of Judge O'Dwyer?

A. No, I know there were some besides that.

Q. Ones besides the career of Judge O'Dwyer, that is, his rise from his coming to this country and about offices he has held, did they have anything to do with the Rosen case?

A. They did make reference to it, yes, sir.

Q. Do you recall whether or not the name of any defendant was mentioned in the article you read?

A. Yes, sir, I believe it was.

By the Court:

Q. Mr. Flanagan, this has not been brought out: Is that an opinion or is that an impression?

A. Well, I would say it is an impression.

Q. Have you formed an actual opinion as to the guilt or innocence of any of the accused?

A. No, sir.

Q. Is the impression one that you can say with absolute confidence you can thrust aside—not that you can forget it—that you can thrust aside and disregard in the trial of this issue?

A. Yes, sir, I can answer that I can dispel it.

Q. It is important to know for sure whether you absolutely will dispel it.

A. I believe I have the willpower.

Q. Not "believe"; "believe" implies an uncertainty.

Mr. Rosenthal: May I object to any further inquiry [fol. 1944] upon the ground that the juror has said three times, both in answer to Mr. Cuff, myself, and your Honor, that he only "believes," which implies a doubt, and where there is a doubt, I submit there should be a challenge for cause sustained.

The Court: If it is only a belief—

Mr. Rosenthal (interrupting): He said that both to Mr. Cuff, myself, and Mr. Turkus, and to your Honor.

Q. Is it only a belief, or are you sure?

A. As I say, I am sure I have the willpower to dispel it.

Q. Are you sure you will exercise that willpower and dispel it in the trial?

A. Yes, sir.

Q. And disassociate it from your consideration of the evidence in this case in deciding the issue?

A. Yes, sir.

Q. And not let it influence you in any way whatever?

A. Yes, sir.

Q. Will you give us your word on that?

A. Yes, sir.

Mr. Cuff: He said he would dispel it if he had evidence of proper weight.

The Court: Yes, there is another point. Mr. Turkus is not finished.

By Mr. Turkus:

Q. Do you recall in our discussions that we had that the defendant has no burden to submit any evidence?

A. Yes, sir.

Q. Have you got the intelligence and the willpower that [fol. 1945] you can put aside the impression you gathered completely from your mind and decide the case upon the evidence in the case?

A. Yes, sir.

By the Court:

Q. But you said, counsel recalls, that you would require evidence to dispel the impression. Would you require evidence in order to enable you to use your willpower to thrust aside the impression?

Mr. Barshay: I object.

A. No, I don't think I would require—

Q. Not what you think, that implies a doubt, but do we have your word on that point?

A. Yes, sir.

Mr. Cuff: May I have a ruling on my objection?

The Court: Objection overruled.

Mr. Cuff: Exception.

By Mr. Turkus:

Q. Will you take the impression out of your mind completely and disregard it completely without any evidence being presented?

A. Yes, sir.

Mr. Barshay: I object to inquiring any further.

The Court: Objection overruled.

Mr. Barshay: Exception.

By Mr. Rosenthal:

Q. First you were questioned by Mr. Turkus.

A. Yes, sir.

Q. When he questioned you you had in mind that you [fol. 1946] were seated here—when he questioned these other four men?

A. Yes, sir.

Q. You heard him ask different propositions of law of those men?

A. Yes, sir.

Q. You followed carefully what he had said?

A. Yes, sir.

Q. You had heard, previous to your coming in the box, the Judge say on innumerable occasions that the defendant never has to prove his innocence?

A. Yes, sir.

Q. That that presumption of innocence was always with him?

A. Yes, sir.

Q. That he never even had to take the stand or offer evidence?

A. Yes, sir.

Q. And all those things that have been discussed since you have been here as a jurymen?

A. Yes, sir.

Q. Notwithstanding that fact, when you were first questioned by Mr. Turkus is it not a fact that you said that you had read articles in the paper prior to receiving your jury summons—that you had read the *Journal-American*—that you had read the *Mirror*, which your wife brings to the house and which you pick up—one or two articles relating to this crime? Isn't that what you told Mr. Turkus?

A. Yes, sir.

Q. Now then, didn't you say that you "think" you could dispel that impression with evidence of a proper weight?

A. Yes, sir, I said that.

[fol. 1947] Q. And when you said that you had in mind the fact that the defendants need never prove anything, didn't you, in an ordinary case where a man's mind is free of opinion?

A. I did lose sight of that fact at the time I made the statement.

Q. When you were next asked by Mr. Turkus did you then say that you "believed" that you could dispel the impression?

A. I meant I thought I had the willpower.

Q. You "thought" you had?

A. Yes, sir.

Q. That implied a doubt, didn't it?

A. Well, I guess everybody has some doubt to some extent of their willpower.

Q. I just want to get your state of mind. That implied a doubt when you answered that question, isn't that true?

A. It may have to a slight degree.

Q. Then Mr. Cuff questioned you, you recall, and when he questioned you you used the word again that you "thought" you would be able to dispel, didn't you?

A. Yes, sir.

Q. That implied a doubt also, didn't it?

A. I suppose so.

Q. Did it, that was your frame of mind?

Mr. Turkus: I object to the question as ambiguous.

Mr. Rosenthal: I will withdraw it.

Mr. Turkus: I don't care whether you withdraw it or not, I object to the question.

Mr. Cuff: I object to that statement in view of the fact that the question has been withdrawn.

The Court: The question has been withdrawn.

[fol. 1948] Q. When you used the word you "thought," that you "thought" you would be able to do something, did you imply that there was a doubt by the use of the word you "thought" you would?

Mr. Turkus: I object. May I argue the point?

The Court: Overruled.

Q. Is that right?

A. Yes, sir.

Q. Then I got up and questioned you?

A. Yes, sir.

Q. And when I questioned you I also asked you in respect to this impression you had whether it went to the guilt or innocence of any one of the defendants in this case, and you said it did, isn't that right?

A. I said, "Slightly," yes, sir.

Q. Well, "slightly" meant that it did go somewhat to the guilt or innocence of the defendants in this case; isn't that right?

A. Yes.

Q. Then again, when you said that, you were questioned by the Court, and to the Court you said you did not "think" you'd need evidence to remove this opinion. Do you recall saying that to the Court?

A. Yes, sir.

Q. You do recall saying to the Court, using your own words, "I don't think I need evidence"?

Mr. Turkus: I object.

The Court: Objection overruled.

A. Well, I expressed the fact I thought I had the will- [fol. 1949] power to dispel it and throw it out.

Q. I am not finding fault with you, but when you said again you "thought" to the Court, you still implied a doubt by the use of the word "thought," didn't you?

A. I suppose so.

Mr. Turkus: I object.

The Court: Objection overruled. This is losing too much time.

Q. You said you "suppose," that is what you said?

A. I suppose it contained an element of doubt.

Q. That was the state of your mind when you were first questioned by Mr. Turkus, when you were questioned by Mr. Cuff, when you were questioned by myself, and when you were questioned by the Court?

A. That is right.

By Mr. Turkus:

Q. Have you got any doubt in your mind now about your ability to lay this impression aside and try the case on the evidence?

Mr. Rosenthal: I object.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

Q. That is my question. Consider it carefully. Have you any doubt as to your ability to lay aside any impression and consider this case on the evidence?

A. I have the willpower to lay aside any impression I have.

Q. Will you do it if you are taken as a juror?

A. Yes, sir.

[fol. 1950] The Court: Challenge overruled.

Mr. Cuff: Exception.

Mr. Rosenthal: Exception to all defendants.

The Court (Addressing talesman): Step back in the jury box.

(Mr. Butler was then examined as to his qualifications.)

Q. Have you discussed this case with anybody prior to your selection or entrance into the jury box?

A. No, sir.

Q. Have you read anything in the papers about it?

A. No, sir.

Q. Not at all?

A. Not about the case.

Q. What papers do you usually read?

A. The Brooklyn *Eagle*. I get the *News* at night, the next morning's edition.

Q. Have you read anything in those papers about this case before you came to court?

A. No, sir.

Q. Do you read the *Mirror*?

A. Yes, sir.

Q. Have you read any articles in the *Mirror* about it?

A. About the case?

Q. Yes.

A. No, sir.

Q. Did you read the *Mirror* while you were in court here, about the case?

A. No, sir.

Q. Have you read anything in the *Mirror* about the case?

A. I read in the *Mirror* about the case going to trial last August.

Q. Did you read anything in the *Mirror* since August, about the case?

A. No, sir.

[fol. 1951] Q. Are you sure about that?

A. I am positive.

Q. You feel there is no doubt in your mind about that?

A. Absolutely no doubt in my mind about that.

Q. During the time you have been coming to court have you had any discussions?

A. No, sir.

Q. About the case or about the defendants?

A. No. About the case, in business they asked me how long would I be here and different questions, but not pertaining to the merits of the case.

Q. Is that true about the time you have been here recently?

A. That is during the time I have been on the jury here.

Q. Now, Mr. Turkus has asked you many questions about the accomplice situation. Do you recall?

A. Yes, sir.

Q. Did the statement he made with reference to participation of the defendants in the commission of this crime convey an impression to you that they did participate in the crime?

A. No.

Q. And presently, as you sit in the jury box, do you have an impression that they participated in the crime?

A. I have no impression at all.

Q. As you sit there you feel, don't you, that it is incumbent upon the District Attorney, upon The People in this case, to prove beyond a reasonable doubt that the defendants did participate in the commission of this crime?

A. Yes, sir.

Q. And you will insist upon it?

A. Yes, sir.

[fol. 1952] Q. And that is not an idle or unimportant idea in your mind, is it?

A. No, sir.

Q. That is an important rule of law in the case, isn't it?

A. Yes, sir.

Q. If his Honor charges you that the burden is upon The People always, every minute of the time, in this case, until you reach a unanimous conclusion in the case, you will insist upon it?

A. Yes, sir.

Q. You realize, Mr. Butler, that, if selected as a juror in this case, there is a solemn obligation and a grave responsibility resting upon each juror?

A. Yes, sir.

Q. With respect to an examination of the facts in the case?

A. Yes, sir.

Q. And you will accept that responsibility?

A. I will.

Q. You will discharge it to the best of your ability under your conscience?

A. I will.

Q. Now, Mr. Turkus has asked you whether you are in sympathy with the enforcement of the penal law of this state.

A. Yes, sir.

Q. And you said, properly, that you are?

A. Yes, sir.

Q. Now, one of the laws of this state is that every defendant charged with the commission of a crime is presumed to be innocent.

A. Yes.

Q. Now, that is a vital and important part of the basic law of this state, and if his Honor should so charge, will you [fol. 1953] give it all of the weight that the law of this State says it is entitled to in behalf of the defendants in this case?

A. Yes, sir.

Q. So I have your assurance that, if selected, when you go into the jury room and up to the time that the twelve of you agree upon a verdict, you will insist that that presumption shall inure to the benefit of the defendants?

A. Yes, sir.

Q. And you will do so?

A. Yes, sir.

Q. Now, should it appear during the course of the testimony or of the trial that the accomplice to which Mr. Turkus referred in his questioning is a man of depraved character and of criminal record, would you consider that in appraising the value of his testimony and the weight to be given to his testimony, as to its credibility and believability?

A. Yes.

Q. Will you consider that?

A. Yes, sir.

Q. With the other facts?

A. Yes, sir.

Mr. Turkus: I object to the form of the question.

A. Yes, sir.

The Court: Objection overruled.

Q. You have answered the question?

A. Yes, sir.

Q. So I will go to another question. Mr. Turkus has asked you, I think, or the other three jurors that have been taken here, whether your state of mind is such that you could believe that a man of bad character might tell the truth.

A. Yes, sir.

Q. Is your state of mind such that you could readily believe a man of bad character could not tell the truth?

A. Yes, sir.

[fol. 1954] Q. And when you find a man of bad character appearing as a witness in the case here, in this case, testifying for The People, you will take his character into consideration in every aspect of the case so far as you are discussing it in the jury room?

A. Yes, sir.

Q. And if you find a man of bad character testifies in this case, you will take that bad character into consideration in appraising his testimony, will you not?

A. Yes, sir.

Q. Now, a reasonable doubt will be defined to you by the Court and you will apply that definition to the case in your deliberation in the jury room, will you not?

A. Yes, sir.

Q. And if a reasonable doubt in this case applies to the defendants or any of them, under the law that his Honor will charge, it is your duty to give the benefit of that reasonable doubt to the defendants—will you do so?

A. Yes, sir.

Q. And when there is—there usually comes a time in this case, after weighing the evidence and giving to it the serious consideration that his Honor will say it is entitled to, you will have reached the point where there is in your mind at least, after you have thought about it in every aspect, discussed it with your fellow jurors—as I say, there comes a point where you yourself have a reasonable doubt as to the guilt or innocence of the defendant or defendants on trial, which you have not been able to dispel by the arguments, and his Honor charges you that in that case it is your duty to [fol. 1955] adhere to it, will you do so?

Mr. Turkus: I object—I withdraw the objection.

A. Yes, sir.

Q. In that case his Honor will charge you, I assume, and I know he will, that it is your duty to give the benefit of

that reasonable doubt that exists in your mind to the defendant or defendants, will you do so?

A. Yes, sir.

Q. Now, Mr. Butler, in appraising the testimony—and I am not referring to accomplices now—of any witnesses in the case, if he has a motive for testifying, will you give due consideration to the motive in the case?

A. Yes.

Q. And if it should appear in this case that there are witnesses here testifying for The People who have committed murders, who have committed robberies, who have committed burglaries, who have committed perjury, and who are not being prosecuted for those actions, will you consider the motive that they may have for testifying here and whether they are testifying falsely, as well as any other witness—will you consider that?

A. Yes, sir.

Q. You will take this ex-robber, burglar, perjurer, into consideration in appraising the weight to be given to the testimony of any such witness?

A. Yes, sir.

Q. And you will take into consideration the hope of reward, the freedom from punishment, that that witness may expect in this case?

A. Yes, sir.

[fol. 1956] Q. And as to any witness in the case, if his Honor should charge you that the expectation of reward or immunity from punishment that attaches to the crime of any witness in the case, if you find that that hope of reward or immunity from punishment attaches to those crimes I have referred to, may be considered by you in your jury room, will you do so?

A. Yes, sir.

Q. As to ascertaining the truth in the case?

A. Yes, sir.

Q. And if you are selected as a juror, Mr. Butler, may I expect that you will give to this case and to each defendant every law, the benefit of every law, in his favor?

A. Yes, sir.

Q. And if his Honor should charge, as I think he will, that each defendant on trial in a criminal case is entitled to the benefit of the presumption of innocence every minute

of the time until there is proof beyond a reasonable doubt of his guilt, will you do so?

A. Yes, sir.

Q. You know that is not an idle thought, and idle presumption; will you give it the weight his Honor says it is entitled to?

A. Yes, sir.

(12:45 P. M.)

Mr. Cuff: May I ask your Honor to adjourn at this time? This is a matter I am asking for myself.

The Court: I understand, yes.

(Addressing tentative jurors and talesmen in the box): Gentlemen, do not discuss the case. Read nothing about it. [fol. 1957] Let no one talk to you about it.

Be back promptly at two p. m.

I want the defendants to remain. Now, the other members of the panel may go until two o'clock.

(After panel has left the room):

The Court: Dr. Nash reports concerning an electrocardiogram report from Rikers Island Hospital concerning the defendant Louis Capone; it is a coronary condition and is not of a serious nature. That he left the hospital of his own volition. This is the Court's comment: Apparently he preferred a cell to the hospital restrictions.

The full communication is under date of October 8th:

"At 1:45 P. M. today I telephoned the medical superintendent of Rikers Island Hospital and was given the following report on Louis Capone: 'Confined in Rikers Island Hospital in January, 1941; electrocardiogram showed coronary changes, inversion T. waves of second and third ribs. Diagnosis: Coronary disease, not of a serious nature. Did not stay in the hospital as long as he was supposed to. Signed himself out.' "

In view of the statement by Dr. Nash, which is a matter of record, taken in chambers, all counsel being present, that under the authority or alleged authority of the prison physician this particular defendant is carrying on his person a lethal quantity of poisonous medication, meaning a sufficient quantity to enable him to commit suicide at will, and that he carries this, of course, with him, and has it with him while under detention in the cell, the Court asks the clerk to communicate at once with Dr. Nash and request

him to get in touch with the prison physician and state the Court's direction that this defendant shall not be permitted to have on his person at any one time during the progress of this trial any more medication than is necessary for his present needs; that no lethal quantity will be permitted.

Mr. Rosenthal: I ask that the Court records show that whatever the defendant may have on his person—so that [fol. 1959] the record is clear—is medication given to him—he not being a physician—where he has been incarcerated in jail, by the physician in the employ of the City of New York and not in his employ.

The Court: I think that is clear.

Mr. Rosenthal: I want it clearly on the record that whatever he has been taking has been taken under advice of a competent physician employed by the City of New York.

The Court: I don't know as to his competency.

Mr. Rosenthal: He has a certificate to practice the same as we have. We may not be competent, either.

The Court: Whether due to coronary trouble or whether due to mental depression based thereon, if this particular defendant were to commit suicide with the poison now in his pocket, it would reflect on the proper trial of this case. The Court is bound to step in and see that the doctor is requested to limit the quantity to the necessity of the case.

Mr. Rosenthal: The only thing I find fault with and except to is the thought that the idea might be permitted to go out in the newspapers or otherwise that this defendant has any intention at any time to commit suicide, because if he ever had any such intention it probably would have been [fol. 1960] long before now. What he has been doing has been to preserve his life rather than destroy it. That is what I want strictly understood, not that anybody gets an erroneous impression.

The Court: Very well.

Mr. Barshay: We join in that.

(A recess was then taken until 2 P. M. The talesmen and prospective jurors were duly admonished. Defendants remanded.)

Afternoon Session—Trial Resumed

(All defendants represented by counsel.)

(Mr. Cuff examined the talesmen in the box as to their qualifications, as follows):

By Mr. Cuff:

Q. Mr. Butler, I just have a few questions. Now, assuming that you are selected as a juror here, you have heard all the evidence and the summation of counsel, each one seeking to have the inferences drawn that they think justified from the evidence and proof, and you have heard his Honor charge the law, and you go to your jury room knowing that it is your duty to discuss reasonably and rationally the evidence with your fellow jurors, and you do that, and after all that and after giving careful consideration to all of the evidence, having scrutinized the witnesses from their manner of testimony, you reach the conclusion in your mind and [fol. 1961] under your oath and on your conscience that there is a reasonable doubt as to the guilt of these defendants or any one of them, will you by your verdict reflect that reasonable doubt, if his Honor tells you that it is your absolute duty to do so?

A. Yes, sir.

Q. You will have the courage to do so?

A. Yes.

Q. And you will do so, as Mr. Turkus says, without fear, reluctance, or hesitation? I can rely upon that if you are selected?

A. Yes.

Q. And you realize that that question of that reasonable doubt is one that concerns you and you alone; is that right?

A. Yes.

Q. And that once you have reached the conclusion that there is a reasonable doubt out of which you cannot be reasoned by anything based upon the proof in the case, that it is your absolute duty and your right as well to adhere to that view despite the number that may be opposed to you? Do you realize that?

A. Yes, sir.

Q. And you will do so, Mr. Butler?

A. Yes.

Q. Of course, you realize that what we are seeking is twelve men who are going to be fair, conscientious, and honest in the performance of their civic duty as jurors. You realize that?

A. I do.

Q. And you also realize the importance of the obligation you assume when you take your place in a jury in any sort

of a case, particularly in a capital case? You realize that, [fol. 1962] I assume?

A. Yes.

Q. You realize, too, do you not, that no one has the right to question your verdict in this case at any time; is that right?

A. Yes.

Q. I think his Honor will charge you that, and if he does you will be guided by it as you will by every other rule of law that his Honor gives you, will you not?

A. I will.

Q. Now then, if in the wisdom of counsel my client should not take the witness stand, if I should deem it, or Judge Talley and Mr. Kriendler and I deem it, he should not take the witness stand or need not take the witness stand, and his Honor will charge you, as I assume he will, that you cannot and must not draw any unfavorable inference from his failure to take the witness stand and testify, will you be guided by that rule of law just as rigorously and rigidly as you will by every other rule of law that his Honor will give you?

A. I will.

Q. And you will not—I can rely that you will not draw any unfavorable inference against my client if he should elect not to testify under our advice?.

A. Yes, sir.

Q. Mr. Stephens, have you read anything about this case at all?

A. Yes, I have.

Q. Was that before you were selected and you got your notice?

A. No, it was before and after August 4th.

Q. Might I ask what papers you read usually?

A. I usually read the *Tribune*, *Times*, *Telegram* and *Mirror*.

[fol. 1963] Q. And I assume, then, that you read whatever appeared in those papers about this case prior to the time you got your notice?

A. Yes, sir.

Q. And then you came down here on August 4th, did you?

A. I was not here on August 4th.

Q. Were you here on August 5th?

A. Yes, sir.

Q. And did you read those same papers after August 4th and August 5th?

A. Yes, I did.

Q. And did you read what appeared in the papers after August 4th and August 5th about this case?

A. Yes, I did.

Q. And that included the *Mirror*?

A. Yes, sir.

Q. And you read everything in the papers about this case that appeared during that period of time?

A. That came to my notice, yes.

Q. There were articles in the *Mirror*. You read them, did you?

A. I read part of the series of articles which appeared in the *Mirror*, yes.

Q. You say you read part of the series. Was it the earlier part or the latter part of the series?

A. I would say to the best of my knowledge I read about seven articles.

Q. In the *Mirror*?

A. Yes, sir.

Q. And they dealt with the defendants in this case, did they not?

A. Yes, sir.

Q. And did you read the articles in the *Journal* about the career of the present District Attorney?

[foi. 1964] A. No, sir, I did not.

Q. Did you read other articles in the *Journal* or the *American* about these defendants and this case?

A. No, I don't read that paper.

Q. I beg pardon. It was the *Herald-Tribune*?

A. That is right.

Q. Did you read articles in that paper about these defendants and the case during the same period that you described having read the *Mirror*?

A. I think I read a few small items about it, yes, sir.

Q. You read everything that was called to your attention or that you noticed in those papers during that period, didn't you, about this case?

A. Yes, sir.

Q. And after you got your jury notice, your interest was accentuated on the articles that you read, wasn't it?

A. To some extent, yes, sir.

Q. In other words, you were then concerned to find out something about these defendants, weren't you?

A. Well, I don't think my reading was any more—

Q. Please, won't you answer my question, Mr. Stephens? I am trying to find the frame of your mind now. You having gotten a notice to serve on this jury, you were eager to find out what you could about the case and about the defendants, and you read the articles for that purpose.

Mr. Turkus: I object to it. The juror intended to offer [fol. 1965] an explanation of what his interest was, and he was precluded by the reframing of the question in its second form.

The Court: Overruled.

Q. Is your answer "No" to that?

A. I am not just sure what the question was.

Q. I will withdraw it and see if I can shorten it and make it clearer. After you got your jury notice, and knowing you were going to serve in the case in which these defendants were to be tried, your interest in the articles was heightened, I should say?

A. Yes, I would say yes.

Q. And you read them after you got your notice in that frame of mind, did you not?

A. Yes, sir.

Q. And you paid closer attention to what was in them than you would have paid had you not been served with the notice, isn't that the fact?

A. Yes, sir, it is.

Q. Now, as the result of your reading did you form an impression about these defendants?

A. Yes, I did.

Q. And that impression was unfavorable, I assume, to the defendants?

A. It was.

Q. And didn't it amount to an opinion about these defendants that was unfavorable?

A. I would call it an impression rather than an opinion.

Q. Can you tell me when you first started reading about these defendants and this case?

[fol. 1966] A. Well, about the defendants I would say a period of years ago.

Q. And from the very beginning you had formed that unfavorable impression as the result of that reading, I assume; is that right?

A. Yes, I would say so.

Q. And it did not grow any weaker as the time went on until you got your notice, did it?

A. No, it did not.

Q. It got stronger, as a matter of fact, the more you read about it?

A. Yes.

Q. And then the time came when you received the notice that ripened your interest in these defendants and this case, and you read whatever you came across in your papers after that; is that right?

A. Yes, I did.

Q. And that has still further strengthened the unfavorable impression, did it not?

A. I would say so, yes.

Q. So that as you sit there you now have that definite unfavorable impression about these defendants, or some of them, in your mind?

The Court: Is there a challenge?

Mr. Cuff: I do.

The Court: Try the challenge.

WILLIAM A. STEPHENS, residing at 1 Plaza Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Cuff:

Q. Mr. Stephens, if I were to propound the same questions [fol. 1967] to you that I propounded before you were sworn, would you make the same answers to them?

A. I would, yes, sir.

Q. And those answers, do they reflect your honest opinion and your state of mind at the present time in so far as these defendants are concerned?

A. Yes.

Q. And that opinion or impression which you described in your answers to those questions goes to the guilt or innocence of these defendants on this case, does it not, on this charge?

A. I don't know what "go to the guilt or innocence" means. I have heard that phrase before.

Q. I will withdraw it.

The Court: The impression the Court has is sufficient. This reading was not merely casual.

Mr. Cuff: I press the challenge.

The Court: This reading was avidly sought out and digested.

Mr. Cuff: Yes.

The Court: And it would be improper for this gentleman to serve. The challenge is sustained.

By Mr. Cuff:

Q. Mr. Brill, may I ask what papers you read?

A. *Post*, *Journal*, and lately I read the *News*.

Q. You please understand that I am not a busybody or prying into your affairs. We are just trying to find out [fol. 1968] the frame of mind of the jurors, and I trust you won't hold it against me that I have to ask you these questions in discharging my duty to my client. Before you got your notice, did you read anything in the paper about these defendants or any one of them?

A. I probably did years ago, but I don't recall that.

Q. I think you did tell Mr. Turkus that you don't recall or you have no definite idea what you read years ago?

A. That is right.

Q. Since you got your notice, since you came down here on August 4th, did you read something about it?

A. Well, on August 4th I read the *Mirror* in this room. I read one article about it.

Q. And, of course, having been called here as a possible juror in the case, you naturally, I assume, were more interested in reading that article? It was accentuated in your mind; is that right?

A. I suppose so.

Q. Did you read anything else about it after August 4th?

A. No, sir.

Q. You obeyed the intention or the direction of the Court?

A. That is correct.

Q. You heard that and you obeyed it?

A. I heard that August 5th.

Q. Besides the reading, did you have any talks with anybody either at home, in connection with your business as-

[fol. 1969] sociates, or even in the court-room or on your way to and from the court-room have you had any discussions?

A. Not discussion about the case.

Q. As the result of what you have read or heard here in the court-room or elsewhere, have you formed any impression in so far as these defendants or any one of them are concerned?

A. In this case?

Q. Yes.

A. Not this case.

Q. Now, you say "not in this case." Does that mean that you have an impression that does not apply to this case?

A. Yes.

Q. And is that impression unfavorable to one or more of these defendants?

A. Not to this case.

Q. I am separating that. I said aside from the fact that it does not refer to their guilt or innocence on this charge, that is what you meant, it an impression that is unfavorable to the defendants, or one of them, in some respect; isn't that right?

A. Yes.

Q. So that if you were selected on the jury, you would start out with that unfavorable impression, would you not?

A. Well, after what I have heard while sitting in the jury, I would say no.

Q. You mean now that you know that a juror has no right to sit in the jury box—I withdraw it.

Mr. Turkus: May I step out of the room for a moment? [fol. 1970] Judge O'Dwyer has something he wishes to say to me.

Q. Mr. Brill, I will start over again about that last question. You believe, do you not, that if his Honor instructs you that you must decide this case solely and only upon what you believe of the evidence here, you will do so?

A. I will.

Q. And if you are selected as a juror in this case, may I rely, so far as my client is concerned, Mr. Weiss, Emanuel Weiss, upon your ability, your willingness, and your power

to dispel any impression that you may have except such as will be based upon the credible evidence here?

A. You may.

Q. You will? Thank you. Now, is there any reason that occurs to your mind? You know what is in your mind better than anybody else in the world. Is there any reason that occurs to your mind now that would prevent you from discharging the solemn oath which a juror in this case will take?

A. No, sir.

Q. To decide this case fairly, honestly, and squarely upon the evidence and the law?

A. No, sir.

Q. You do not?

A. No, sir.

By Mr. Turkus:

Q. Now, Mr. Flanagan, you have heard something here about reasonable doubt, have you not?

A. Yes.

Q. Having in mind what you told us this morning, if you [fol. 1971] come to the point, after considering all the evidence in the case and the law that his Honor will give you, and the summation of counsel, where you entertain a reasonable doubt as to the guilt of any one of these defendants or of all three of them, do you feel that you will be able and will give them the benefit of that reasonable doubt?

A. I will.

Q. You know that that is one of your duties or one of your obligations if you are selected, that you must decide that on your own conscience, under your own oath, for yourself?

A. Yes.

Q. That nobody else has a right to decide that for you except that you are bound to listen to reason and argument based upon the evidence, but if after listening to that reason and argument and after considering all the evidence and applying the law to it, you have a reasonable doubt as to the guilt of any one of these defendants, have I your assurance that you will not let any impression or any other thing interfere with giving them the benefit and recording your vote as Not Guilty?

A. Well, I think that the reasonable doubt would call for an explanation on the part of the Court.

Q. Is there some doubt about your ability to do it?

A. No.

Q. His Honor will define what reasonable doubt is, and if he should tell you that a reasonable doubt is something [fol. 1972] based upon the evidence in the case, for example, the question of accomplice—suppose you have an accomplice who is, as I have stated, proven out of his own mouth to be an utterly depraved character, and you have a reasonable doubt as to the truth of any part of his story or the whole of it, you would have the right and it would be your duty to reject it, would you do so?

A. Yes.

Q. If his Honor should charge you you are bound to reject in that case, then the case would have to fall; do you realize that?

A. Yes.

Q. And would you give the benefit of that doubt to the defendants?

Mr. Turkus: Objected to. It is improper, because the testimony in the case may not rest only upon the testimony of an accomplice.

Mr. Cuff: I will assume that.

Q. If the testimony in the case as to the defendants' participations, if they did participate in the commission of this crime charged in the indictment, depends entirely upon the testimony of an accomplice, and that in examining the testimony and the character and the motive of that accomplice you found there was a reasonable doubt as to the truth of his story, if his Honor should charge you that in that event it would be your bounden duty under your oath to give the benefit of that doubt to the defendants and to [fol. 1973] return them Not Guilty, would you do so?

A. I would.

Q. And so far as this charge is concerned, you appreciate, do you not, that the indictment is just a written charge against these defendants upon which they must be tried, and no other; you realize that?

A. Yes.

Q. I think Mr. Turkus said to one of the jurors—I do not know whether you remember it or not—he used Mr. Capone's name, Mr. Rosenthal's client—he did not intend to convey to you—he did not intend to convey to you, I think, that that applied only to Mr. Capone, but that these

defendants, all three of them, each one of them, my client, Mr. Barshay's client, and Mr. Rosenthal's client are here only upon this charge and upon no other, and will you insist that we be confined to this charge and this only?

A. Yes.

Q. And to consider the evidence as it applies only to this charge? So that I also may rely upon your ability to discharge any unfavorable impression you have and to decide this case on nothing else but what you believe about the testimony that will be adduced here under oath; is that right?

A. That is right.

By Mr. Rosenthal:

Q. Mr. Butler, in answer to a question I think you said among the newspapers you read was the *Daily Eagle*, the *News*, and the *Mirror*. Am I right in that? Did you say [fol. 1974] the *Mirror* also?

A. I say that I do read the *Mirror*, but I would not say I was a steady reader.

Q. Have you read the *Mirror* recently, sir?

A. Yes, I have read it.

Q. How recently?

A. I read the *Mirror* the night before last.

Q. Have you read it within the last month or month and a half to any degree of regularity?

A. Yes, I have.

Q. In reading the *Mirror* within the last month or month and a half, have you noticed any articles or series of articles in the *Mirror*?

A. Pertaining to what?

Q. Pertaining to various people in connection with Judge O'Dwyer's investigation of crime.

A. Yes, I did.

Q. And how many articles have you read in the last month or two in that particular series? All of them?

A. Have I read?

Q. Yes.

A. In the *Mirror*, the series of articles?

Q. Yes.

A. I never read any of them.

Q. Then maybe you misunderstood the question that I asked you. I asked had you read any of those series of articles in the last couple of months.

A. I misunderstood you then. I thought you said did I see any articles. I did see the headlines on those papers as I skimmed through *it*.

Q. In the last couple of months would you read the headlines of those articles?

A. Why, yes.

[fol. 1975] Q. And in reading the headlines at any time was the name of any of these defendants mentioned?

A. Truthfully, I could not say that the defendants were mentioned. They may have. As a matter of fact, I don't get the *Mirror*—I buy the papers for certain feature writers.

Q. I am not quarreling with you. I read it once in a while myself. I am not quarreling with what papers you read. I am only trying to ascertain whether or not certain things have developed in your mind which might or might not preclude you from being a fair and impartial jurymen. I am not trying to pry into whether you like Walter Winchell or Nick Kenny or whom you might like or dislike, or even Jimmy Fiddler. The question is, have you in any wise read anything in any of these papers in the last month or two which in any way mentioned the name of any one of the defendants on trial? That is what I am trying to get.

A. I would say no. When you say reading, you mislead me. If it is looking at the headlines, I would say yes.

Q. Of course, the word "reading" implies that whatever you say, whether it consisted of ten words concerning a defendant, or five words or a hundred words, whether you read it or whether you did not read it.

A. In that case, Counselor, I did read.

Q. Can you recall at this time whether or not—and let me see whether I disagree with your interpretation of [fol. 1976] headlines—do you mean the headlines, or the head notes to these particular articles?

A. The thick type captions in the paper.

Q. These thick type captions which you have read, can you tell me now whether any one or more of them were in any wise devoted to any of the defendants on trial?

A. Yes, they were.

Q. Do you recall now whether there was any statement in these head notes of a character which conveyed the alleged participation of any of these defendants in any particular crime?

A. No. As I recall it, no, there was not anything about the case. What I read was concerning the trial being continued, and as per instructions, I thought it was best to pass those things by.

Q. So as you sit here at this time—Withdrawn.

Q. You say you read the *Eagle* also?

A. Yes, sir.

Q. Do you only take certain feature sections out of the *Eagle*, or do you read the news section?

A. Just the feature sections out of it.

Q. Have you read anything within the last month or so in the *Eagle* concerning any of the defendants on trial?

A. Just about as much as I read in the other papers.

Q. In reading the *Eagle*, was there, to your recollection now, was the name of any of the defendants mentioned in any article that you may have read?

[fol. 1977] A. I am inclined to say it was.

Q. Was anything said in regard to the alleged participation of any of the defendants in this crime in the article that you read, or articles that you read?

A. I could not say that.

Q. You mean that although you may have read it, it left no distinct impression upon you in what the reading matter consisted of, is that what you mean?

A. Yes.

Q. In the *News* did you read any article concerning the defendants?

A. I did not have the *News*.

Q. By reason of anything that you may have read, sir, is there any impression that has been created in your mind insofar as any of the defendants are concerned?

A. Absolutely not.

Q. You have never sat on a jury before, have you?

A. No, sir.

Q. Have you any relatives on the police force?

A. No, sir.

Q. Any close friends attached to the Police Department?

A. No.

Q. Your name is Butler. There is an Inspector Thomas Butler. He is no relation of yours, is he?

A. No.

Q. Do you know any of the persons in the District Attorney's office, any of the lawyers or attaches?

A. No, sir.

Q. Have you ever heard, either over the radio or in any public forum, any speeches made by any Assistant District Attorney in relation to crime?

[fol. 1978] A. Any Assistant District Attorney? No, not in relation to crime.

Q. A great deal has been said by Mr. Turkus and by Mr. Cuff in relation to legal questions that may arise in this case, and which have given your answers. You understand that my associates and I represent Mr. Louis Capone over here, one of the defendants? You understand that?

A. Yes.

Q. And as far as our particular endeavors are concerned, they are directed to that particular defendant. Do you understand that, sir?

A. Yes.

Q. Naturally, in representing a particular defendant it may be necessary, when either I examine a witness or even when I sum up, that I may have to go over a part of the ground that same other lawyer went over in respect to his own client. You understand that?

A. Yes, sir.

Q. The mere fact that it may be necessary, because of the fact that these three men are on trial together, rather than separately, that the length of time that is going to be consumed might to you appear to be prolonged because one lawyer may be asking a similar question to what the other lawyer may have asked, having an entirely different purpose in mind when he asks it—is that clear?

A. Yes, sir.

Q. That is not going to prejudice you against my client?

A. Of course not.

Q. No more than, as Mr. Turkus says, because it happens [fol. 1979] to be repeated three times it is going to make it three times as important, and you said that it would not?

A. That is true.

Q. As far as the defendant represented by me is concerned, it may develop in this case that he will take the stand, and it may also further develop that he will offer proof in addition to taking the stand. The mere fact that he is a defendant on trial, is that going to brand in your mind his testimony as untrue, merely because he is a defendant?

A. No.

Q. Of course you are going to apply tests to his testimony the same as you would apply to anybody else. He has a reason for testifying. He is anxious to resist conviction in this case, but because of that fact it does not necessarily mean that he is lying under oath, does it?

A. No.

Q. In addition to that, he may call other witnesses to substantiate his statements. The mere fact that we may offer proof is not going to make you believe that the principles of law which you heard discussed here regarding the necessity on the part of the District Attorney to establish in every case the guilt of a man beyond a reasonable doubt before you can convict, and that at no time must a defendant offer any proof nor need he offer any proof to establish his innocence—the mere fact, as I started out to say, that we do go forward and offer proof, although unnecessary under our law, is not going to create in your mind the thought that we must prove our innocence because of that, is it?

A. No, sir.

Q. Commonly speaking, it is not going to shift the burden over to us to establish our innocence, because of the fact that we started out with proof to offset what may have been said about us by those called by The People; is that right?

A. I understand.

Q. Of course, you have already stated—I don't believe you have, but other men in the box—that your knowledge of the fact that an indictment is merely a formal written accusation which is the means, the orderly means, of bringing a person to trial—is that clear to you?

A. Yes.

Q. And the fact that three men are on trial together does not raise in your mind the thought, does it, that because of the fact that, as the District Attorney has said, they have been grouped together, that in reality there is such a group as the District Attorney claims? The mere fact that they are on trial together does not raise that thought in your mind, does it?

A. No, sir.

Q. You understand that, for the purpose of convenience, the law permits a number of individuals charged with the

same crime to be tried in one forum, such as here, but that in so far as the law is concerned each one of these individuals must be proven guilty separately by you beyond [fol. 1981] a reasonable doubt before you can find him guilty. You understand that?

A. Yes.

Q. So that you are not going to raise any inference in your mind that here are three men that have been charged together in an indictment, and because it has been charged that way actually it is that way—is that right—unless, of course, the proof substantiates the charge, in which event under the law it does substantiate it, it would be your duty to convict, no question about it, but you are not starting out with that inference, are you?

A. No, sir.

Q. Not having had any experience in jury work, at a certain time in the case the People, represented by Mr. Turkus, will say, "We rest," and certain motions are made of a legal nature to the Court to dismiss the indictment. The Court may or may not dismiss, but in the event that it is not dismissed, you realize, if the Court tells you, that that is merely a question of law. Do you understand that, that the Judge has no right to determine facts—do you understand that, sir, and that it merely means that the Court in its wisdom considers that there is a sufficient amount of facts involved in the case to warrant the submission of those facts to twelve men, and that is the only thing. Do you understand that?

A. Yes.

Q. If you are told by the Judge that no inference adverse to the defendant can be drawn because of the fact [fol. 1982] that the motions have been denied, you will keep that out of your considerations in your jury room when you come to deliberate on the guilt or innocence. Am I correct in that?

A. Yes.

Q. Of course, you have heard, as I said, the question of accomplice and the fact that no man can be convicted on the uncorroborated testimony of an accomplice. You remember hearing that proposition?

A. Yes.

Q. Are you also acquainted with the fact that this so-called corroboration cannot consist of a number of accom-

plices attempting to corroborate one another? You understand that?

A. Yes.

Q. You cannot go into the jury room and say, "Here, John Jones says they did it, and he admits he is an accomplice. Pete Smith said they did it, and we find he is an accomplice, but, being that there are two, that one can corroborate the other." You cannot do that. You understand that? Even if you were to believe what the accomplice may say to be the truth, you understand that the law not only as to this case but as to every case is that every accomplice must be viewed with suspicion. You must be wary. You must use a great deal of caution in determining whether the man is telling the truth in so far as it respects other persons. Is that clear?

A. Yes.

Q. You may determine that the man is telling the truth [fol. 1983] about himself, that he, the accomplice is actually a murderer and did commit the murder; you may find that, but you understand that your duty goes further, not in determining what he may be telling about himself as to whether it is true, but as to whether it is true what he is attempting to tell you about somebody else; is that clear?

A. Yes.

Q. If you ever were to believe that he was telling you the truth, you understand that then it becomes your duty to ascertain whether there is any independent evidence tending to connect the particular defendant—in my instance it would be the defendant Capone who erroneously has been called Capone throughout the trial by Mr. Turkus—whether or not it tends to connect that defendant with the crime. Is that clear?

A. Yes.

Q. There are numerous ways that the District Attorney may contend that he has furnished to you that proof. Being in the dark at this time, I cannot mention all the ways, but I can mention one that may appeal to him and that is the one where he may have some individual come in here and claim that one of the defendants or the defendant told that individual that he, the defendant, did commit the crime. Is that clear? If such is the case here, and you find that that particular individual has committed murders for which he has procured immunity, which means that he cannot be pun-

ished, has committed perjury, false swearing under oath, [fol. 1984] and numerous other things, will you, in trying to determine the truth of what that man or men may say, try to find out whether or not the motive which he has is of sufficient importance to make him lie? Will you do that?

A. Yes.

Q. If in your own mind you are of the belief that the interest and motive that the individual has in resisting or to resist his own punishment is sufficient to make him say anything under oath without regard or respect to the truth and thereby you do not believe him, would you hesitate, if that is the only evidence outside of the accomplice, to find a verdict in favor of the defendant?

A. No, sir.

Q. Of course, there are two ways of finding out who is an accomplice. The one is—and I do not know whether you heard this explanation and that is the only reason why I am repeating it; I do not intend to repeat it to you two gentlemen; I am picking on Mr. Butler because he happens to be No. 1 here—the one is where the Judge will say to you, "Gentlemen, so-and-so has taken the stand, and I tell you that that man is an accomplice as a matter of law." The Judge, being the judge of the law, you understand that, binds you definitely when you go in the jury room to start off and say, "This man is an accomplice; unless there is other corroborating testimony, we cannot find a guilty verdict." Then the case may come where the person who took the witness stand himself may deny he is an accomplice, [fol. 1985] but from all the facts and circumstances you, the jurymen, believe he is an accomplice. And in such an instance the Judge would say to you, "There are other witnesses here who I do not charge you as a matter of law are accomplices, but who I leave to you to determine their complicity." Is that clear?

A. Yes.

Q. Then it becomes your duty to ascertain whether or not in your own mind and from your own reasoning and from the evidence, that particular individual is an accomplice. Is that clear?

A. Yes.

Q. Once having determined that he is an accomplice, then you understand that your duty is the same as it is in respect to the accomplice charged by the Court to you as a matter of law to be one. That is clear?

A. Yes.

Q. Not having served on a jury before, do you realize that your opinion, once it is gained and once it is expressed in the jury room, reasoned out from the evidence, is just as valuable as any one of the other eleven men on the jury? Do you understand that?

A. Yes.

Q. Do you further understand that it is your duty not to sit arbitrarily in the corner and say, "I have made up my mind to so-and-so, and I dare you change it," and refuse—and that has been done—and refuse arbitrarily to argue with other men? It is your duty to say, "Here, I have determined, because of so-and-so, so-and-so, so-and-so, that these are the facts in the case, and that is the reason why [fol. 1986] I am sticking to my view," and then you will listen to the other men, to their reasoning. But if, on your own conscience, after they are finished reasoning with you their logic, you still retain the impression that your logic is the proper logic applied to the evidence, merely because of your inexperience as a jurymen or because of numbers against you or for any other reason would you change your opinion?

A. No, sir.

Q. You understand that in that event you are not committing an arbitrary act at all; you are committing an act which you are supposed to do under your oath as a jurymen, namely, to decide upon what your conscience dictates is the truth from the evidence adduced on the trial. Of course, if you can reconcile your views with the others, then it is your duty to reconcile it and acquiesce, or they, on the other hand, to acquiesce with you.

Merely because the District Attorney may get up and say to you, "So-and-so is not an accomplice," that, in and of itself, is not going to make you yourself, if the facts warrant it, say that he is not an accomplice; is it?

A. No, sir.

Q. Merely because the Court leaves to you the question of whether a man is an accomplice or not, that in itself is not going to make you say he is not an accomplice?

A. No, sir.

Q. If you find the facts warrant that he is; is that right? [fol. 1987] Now, sir, on the question of the defendant represented by me, assuming that some witness or witnesses get on the stand and say they know this defendant, they

met him at times, and this defendant goes on the stand and admits to you that he knows some of these People's witnesses and has met them on occasions at several places, but denies definitely and absolutely any participation in this crime. The mere fact that one may know the other, would that raise in your mind the presumption that, merely having known one another, that he must be guilty?

A. No, sir.

Q. Of course, you have a right to take into consideration, in determining the guilt or innocence, the association of any individual, just like you have the right to take into consideration the association of The People's witnesses in a hotel, segregated together over a period of months, where they could concoct any kind of a story they wanted to, if they felt like doing it. All those things may be taken into consideration.

Mr. Turkus: I object to that.

The Court: This is summation. Sustained.

Mr. Rosenthal: Exception.

Q. Do you know any detective by the name of Meehan or McDonough or any detective by the name of McCarthy or Swift?

A. No.

Q. Do you know Captain Bals or Lieutenant Osnato?
[fol. 1988] A. No, sir.

Q. You have been asked a great many questions. Let me ask you just this other question or just two or three other questions. One is in respect to the question of alibi. Have you, while you have been present in the court-room, at any time heard that discussed with other men that were on the jury?

A. I don't believe I have.

Q. I will just repeat it again. You see, a defendant, in offering evidence, may offer evidence of what is termed an alibi. An alibi in law is where witnesses or people go on the stand and establish the fact that the defendant was at a place with them at a time when this crime is alleged to have been committed. Is that quite clear to you?

A. I understand.

Q. Do you understand, sir, that even though an alibi is offered, that all that is necessary on the part of the defendant when he offers an alibi is to have that alibi create

in your mind a reasonable doubt as to his guilt? Is that clear to you?

A. Yes.

Q. You understand that he does not, once he offers an alibi, undertake to shift the burden from this side of the table over to that side of the table? The burden still stays here; is that clear? But that if the proof of the alibi is sufficient to create a doubt in your mind where, in the absence, none would otherwise exist, that doubt must be resolved in [fol. 1989] favor of the defendant the same as any other reasonable doubt. Is that clear?

A. Yes.

Q. Another thing is the question of the District Attorney repeating about the solution of a crime by the use of accomplice. The mere fact that somebody who admits his own participation in the crime has told the District Attorney or the Grand Jury a story upon which the District Attorney predicates his question to you, that does not raise in your mind the thought that this particular crime has been solved, does it?

A. No, sir.

Q. You realize that the question of the solution, in so far as it affects these defendants, not the man that he brings here who admits that he maybe killed the fellow, but as far as it affects these defendants are concerned is your job to determine; isn't that right?

A. That is correct.

Q. Is there any question in your mind at all which I may not have reached through questioning that would in any wise incapacitate you in your opinion from being fair and impartial?

A. No, sir.

Q. Mr. Brill, of course, the answers which you gave were confined mostly to a defendant not represented by me in so far as your having read articles and knowing somebody, and so on. That is correct?

A. Yes.

Q. So I will leave that job to the man who is paid to undertake it. I am interested purely in the defendant Louis [fol. 1990] Capone. In so far as he is concerned, have you at any time read anything about him of any character?

A. No, sir.

Q. As you sit here I know that you have listened to the questions I addressed to Mr. Butler?

A. Yes.

Q. Would your answers, if I addressed them to you, be substantially the same as he gave?

A. Yes.

Q. Do you know of any reason so far as the defendant represented by myself and associates is concerned why you could not be fair and impartial to the defendant Louis Capone?

A. No, sir.

Q. You never sat on a jury?

A. I did.

Q. Criminal case?

A. Yes, sir.

Q. In this court?

A. It was before Judge Taylor in Oxford Street.

Q. That is a few years ago?

A. Yes.

Q. Was that a capital case?

A. It did not go—

Q. The person pleaded guilty?

A. Yes.

Q. Is that your only jury service?

A. No, in civil cases.

Q. Of course, you realize the law in civil cases is entirely different from that in criminal cases.

A. Yes.

Q. Whereas in a civil case the person only has to prove the case by a fair preponderance of the evidence, in a criminal case, where the possibility of life or liberty is involved—it is the duty of The People to establish guilt beyond a [fol. 1991] reasonable doubt before there can be a conviction. Mr. Brill, I was just in the midst of asking the last question. Do you know of any reason why you could not be fair and impartial?

A. No.

Q. Mr. Flanagan, you have heard the questions I asked—You have already been examined on the—which you say you have by reason of certain things which you read. You know now, sir, that under our criminal law, it is never the duty of a man to prove himself innocent?

A. I understand.

Q. And you understand, sir, that an indictment which is found by a Grand Jury behind closed doors is merely an accusation against a man which, when he says "Not guilty,"

raises all the questions concerning the evidence. You understand that?

A. Yes.

Q. Do you feel, sir, that because of your condition or state of mind that the quality of evidence that would be necessary for the District Attorney to produce in this case would be less than what would ordinarily be true were you sitting in a case where you did not have any impression against the defendants.

Mr. Turkus: Objected to. That is a question of law.

Mr. Rosenthal: That goes to the state of mind of the individual, in view of his statements.

Mr. Turkus: I have an objection pending, your Honor.

The Court: What I am thinking of is this: that there was [fol. 1992] the trial of a challenge in which all counsel participated and in which this was a proper question.

Mr. Rosenthal: That was not directed to that particular phase, sir. We were confined on the challenge to the particular point which was raised, as I take it, for the particular challenge, not as to qualifications that might arise as to other causes which were not even inquired into at the time [fol. 1993] of the challenge. That was my theory in questioning at the time. I believe that is the rule on the trial of a challenge.

The Court: Wasn't the trial of the challenge based upon impressions received from what was read?

Mr. Rosenthal: Yes, and whether he could lay it aside. Now I am directing myself to the question of the quality of the evidence that may be required in this case because of the impression which he has, as differentiated from what would be required as a standard of law in a case where he has never read.

Mr. Turkus: That is splitting hairs.

The Court: I think it is.

Mr. Rosenthal: I will take the Court's ruling on the subject.

The Court: I think you are splitting hairs. I think you are reopening something that you had an opportunity to ask and which was embraced in the trial of the challenge.

Mr. Rosenthal: I, of course, take a different view than your Honor, but your Honor is supreme, and I am waiting for your Honor's ruling on the subject one way or the other.

The Court: I will sustain the objection.

Mr. Rosenthal: I respectfully except. I have no further questions, if your Honor rules that the challenge has been [fol. 1994] tried. Is that ruling, I assume, as to all the defendants, your Honor?

The Court: The ruling has been made heretofore, and you know what it is. I think it is reasonable to avoid repetition in the trial of challenges. Try it once and for all with all counsel having free range participation.

By Mr. Barshay:

Q. With respect to you, Mr. Brill, are you related to a gentleman by the name of Brill who was a former Assistant Attorney General, Joseph Brill?

A. No, sir.

Q. You are the person who volunteered kindly to Mr. Turkus that you are friendly or you knew once a man by the name of Kasacove?

A. Yes.

Q. And you are also the gentleman who said you had some impression with respect to Buchalter?

A. Yes.

Q. May I know where you gained that impression, sir?

A. Well, that was the time that we discussed Kasacove.

Q. That was about three years ago?

A. Yes.

Q. Have you retained that impression?

A. Yes.

Q. Has it been fortified by the reading of any articles?

A. No, sir.

Q. Has it been fortified by the hearing of the matter being discussed with respect to this case?

A. No, sir.

Q. May I know from you, is that impression unfavorable to the defendant?

A. To a certain extent, but not in this particular case. [fol. 1995] Q. Well, is it such an impression that would require some testimony to remove?

A. No.

Q. Assuming that Mr. Buchalter should take the stand and subject himself to cross-examination and thus make you the person to decide whether or not he is telling the truth in this case, will you use that impression against him?

A. No.

Q. Assuming, sir, that Mr. Buchalter does not take the stand, having in mind that the Court will charge you that no defendant need prove his innocence, will you hold that impression against him then?

A. No, sir.

Q. Is that impression present with you now?

A. Well, I would say no.

Q. You say you would say no. Does that indicate a doubt in your mind?

A. No. I will say no.

Q. Is that your definite answer?

A. That is right.

Q. You said you heard the name attributed to him, Lepke. Did that fact draw an unfavorable impression with you toward him?

A. What I had before.

Mr. Barshay: May I challenge the gentleman for implied bias, your Honor?

The Court: Yes, try the challenge.

What is that based upon? You tried one challenge. What is this based upon?

[fol. 1996] Mr. Barshay: We never tried a challenge with respect to this gentleman, your Honor.

The Court: I beg your pardon.

PHILIP BRILL, residing at 1070 De Witt Street, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Barshay:

Q. Mr. Brill, would you answer under oath the same way as you answered when you were not under oath, if I should put the same questions to you as I did before?

A. I would.

Mr. Barshay: No further questions.

The Court: Any other counsel for defense wish to question the witness?

Mr. Talley: No further questions by any counsel.

Mr. Turkus: In view of the fact that this man Kasacove was a defendant in one of the cases—

The Court: I did not hear you.

Mr. Turkus: The matter that was elicited was that Kasacove was an accountant for Buchalter and a defendant in a case, and that the information came to the prospective talesman through the Kasacove matter—I think it might be wise, so that there would be no question about a verdict in the case, that I do not oppose the challenge. I do not.

The Court: You would like to save a peremptory challenge if the Court would let you.

Mr. Turkus: I am not trying to save them anything, except I want to have a jury here that is fair. I want to make sure when the verdict is rendered it will be a lasting verdict. [fol. 1997] The Court: The Court has to be persuaded. I want to hear you on that. I would like more than what you just said. So far I don't see it.

Mr. Turkus: Mr. Barshay has urged a challenge for implied bias.

The Court: I know what he has urged. Don't tell me what anybody has urged. I ask that counsel argue the point.

Mr. Barshay: With respect to myself—

The Court: Yes.

Mr. Barshay: —your Honor, I have said all I can say on the subject.

The Court: You tried to argue it, and the Court does not see the point, so you prefer to get an exception rather than give the Court an answer to straighten it out in the event of your being right. If you are working for the record, rather than immediate results, go ahead; you have a right to refuse to argue the point.

Mr. Barshay: I stated our position, sir.

The Court: I still do not know what it is. I have to conclude that you are not trying to enlighten me, but you are trying to get an exception on the record.

Mr. Barshay: Judge, maybe we did not understand each other.

[fol. 1998] The Court: I do not know what it is all about. I am entitled to know.

Mr. Barshay: All right, sir, I will tell you. The gentleman has said that he has formed an impression at a time when he knew and spoke about a certain individual.

The Court: What individual?

Mr. Barshay: Mr. Kasacove, who happened to be an accountant for Mr. Buchalter.

The Court: Many years ago?

Mr. Barshay: Yes, but he spoke about that fact only a few years ago when the matter happened, when that Mr. Kasacove was involved in some litigation.

The Court: Was it this case?

Mr. Barshay: Of course it was not this case.

The Court: Was this case discussed?

The Talesman: No.

The Court: When you say the matter happened, what matter happened?

Mr. Barshay: I prefer not to say, sir. I will say it to you right at the bench, together with Mr. Turkus. I will be glad to do that.

The Court: It has been proclaimed to every member of the panel by yourself, so there is no use in secrecy in that respect. Your client is at present serving a sentence. Has it to do with that conviction?

[fol.19c9] Mr. Barshay: No, sir, something other than what has been brought out in this court, and I will be glad to tell it to your Honor if you will listen.

The Court: Then step up and tell it and the reporter will step up and take it.

(The following occurred at the bench, not within the hearing of the talesmen.)

Mr. Barshay: Mr. Kasacove was charged with harboring this defendant and was convicted and the conviction was reversed. This defendant was not a co-defendant in that case.

The Court: When he was sought on what charge?

Mr. Barshay: In the Federal Court.

The Court: On the charge for which he is now convicted?

Mr. Barshay: Yes, he pleaded guilty to that.

The Court: That is the conviction that the panel is already aware of in respect to your client. The defendant being a fugitive, then followed the charge against Kasacove that he harbored him?

Mr. Barshay: That is correct.

The Court: And the conversation between this man, the talesman—

Mr. Barshay: And friends of Kasacove—

The Court: —was in relation to the harboring?

[fol. 2000] Mr. Barshay: That is correct. That is what he said.

The Court: We are not trying Kasacove.

Mr. Barshay: I know that, but I do not want this jury to know that this defendant was a fugitive from justice. That is the only reason I did not want to make comment about it.

The Court: Do you think he can be prejudiced, in view of the admission that he is serving a sentence of more than 70 years on conviction of crime? Do you think he can be blasted any worse by saying that at one time he was a fugitive?

Mr. Barshay: The question of flight may be important.

The Court: Not flight on this charge. The charge of the Court in relation to flight applies only to the evidence in the case on which the man is convicted. The Court wants to be fair. I think this is going too far. If you want to exercise a peremptory challenge, you may do so.

Mr. Barshay: I won't.

The Court: All right.

(Mr. Barshay and Mr. Turkus then resume their places at the counsel table.)

The Court: Any other counsel wish to be heard?

Mr. Talley: I do not.

Mr. Barshay: Will you bear with us a second?

[fol. 2001] The Court: Certainly. The challenge is overruled.

Mr. Barshay: Exception.

Mr. Talley: There are no further questions.

Mr. Turkus: I will have to peremptorily challenge you, Mr. Brill. The other jurors are satisfactory. Mr. Butler is satisfactory to The People of the State, and Mr. Flanagan is satisfactory to The People of the State.

Mr. Rosenthal: As to Mr. Flanagan, reserving the exception which we took to the Court's ruling on the overruling of the challenge for cause, we now peremptorily challenge.

The Court: All right.

Mr. Rosenthal: We also peremptorily challenge the other, Mr. Butler.

(The following talesmen were called and took their places in the jury box: Morton Halperin, of 789 St. Marks Avenue; George F. Wilkens, of 342 Park Place; Harold F. Cross, 878 Fifty-third Street; Harry J. Kane, of 319 Eighty-second Street.)

By Mr. Turkus:

Q. Mr. Halperin, you did reside at 135 Prospect Park West?

A. Southwest.

Q. Is that down near 10th or 11th Street or Seeley Street?

A. That is right.

Q. Have you lived in that neighborhood for some years?
[fol. 2002] A. About six years.

Q. And prior to that time where did you live?

A. 1362 President Street.

Q. Is that Crown Heights?

A. Yes.

Q. The present address, St. Marks Avenue?

A. That is right.

Q. What section of Brooklyn is that?

A. I imagine that is Crown Heights, too.

Q. You are listed on this trestle board where the names and addresses and employment are listed on these slips of paper that are provided counsel, that you are a real estate manager; is that correct?

A. Yes.

Q. Are you in the real estate management business for yourself or for somebody else?

A. For somebody else.

Q. What is the name of your employer?

A. The Halmor Properties Corporation.

Q. In the real estate management did you have a building on Eastern Parkway?

A. I used to manage buildings on Eastern Parkway.

Q. Was the name of Philip or Farvel Coben familiar to you from the management of the property?

A. I had a tenant by the name of Farvel there.

Q. Did his tenancy abruptly terminate?

A. While I was manager?

Q. Yes.

A. Yes.

[fol. 2003] Q. He was one of the defendants against whom this indictment has been severed. I can tell you that now, because that is something I think should be in your mind. Would your knowledge of the fact that he was a tenant in that property affect your judgment of this case?

A. I would not exactly know.

Q. Well, of course, you did tell me how his tenancy abruptly terminated. You knew that?

A. Yes.

Q. Should his name appear in the testimony— Of course, I will have to withdraw it. I cannot tell you about the case before we start—but should his name figure in this case some way, will you have any prejudice against any of the defendants? That is about as far as I can say.

A. I might have.

Q. Did you notice whether you saw Philip Cohen in court?

A. Yes, on the first two days.

Q. Of course, the indictment having been severed against him means that the trial proceeds against the other defendants, and in so far as he is concerned, he is not being tried now jointly with them. Of course, you know the state of your mind best. Do you feel if his name is brought out into the testimony, from what you know about his tenancy, that you may be prejudiced against these defendants? That is—as far as I can go at this point.

A. I did not know much about his tenancy.

[fol. 2004] Q. Have you got some impressions or some notions as a result of this man having been a tenant in that Eastern Parkway house?

A. No, I don't think so.

Q. Were you interviewed or did you have any talks with any police officers?

A. With Mr. Joseph.

Q. In so far as this Philip Cohen incident is concerned, is there anything in your mind that may be to the disadvantage of the defendants in the case?

A. I believe so.

Q. Excuse me, Mr. Halperin, we will come back to you later, when another one of the lawyers comes in.

Mr. Wilkens, is that your new address, 342 Prospect Place?

A. Yes.

Q. Is that somewhere near Underhill Avenue?

A. That is right.

Q. Have you lived there for a long time?

A. Since last February.

Q. Prior to that time you resided at 34 Butler Place?

A. Yes.

Q. That is right around that section there?

A. That is right.

Q. I suppose that is commonly called the Hill section up there?

A. Park Slope.

Q. Did you live in any other section in Brooklyn?

A. Flatbush some years back.

Q. And you have never lived in the Brownsville-East New York area of Brooklyn?

[fol. 2005] A. No.

Q. There are certain industries that I have to make inquiry about, and I will make all the inquiries through you, and when I go down the line I won't have to repeat it with the other jurors. We are trying to speed the selection up, if we can. In any shape or form, have you through business or otherwise come in contact with persons engaged in the garment industry or the clothing industry?

A. I have.

Q. Is your business an accountant, as listed here?

A. That is right.

Q. Are you in business for yourself?

A. At the present time, no. I am comptroller of a brick corporation.

Q. Where is this company operating from?

A. Park Avenue, New York.

Q. Prior to that time were you an accountant for someone else or for yourself?

A. No, I was connected with the Government, the Treasury Department.

Q. You mean that you have had contact in that area on official business?

A. That is right.

Q. You don't maintain social contacts with anybody who manufactures men's or ladies' clothing, do you?

A. Not socially, but I know quite a few of the Manufacturers.

Q. Manufacturers of ladies' clothes?

A. Both in the clothing and—

Q. Does your livelihood depend now in any wise at all [fol. 2006] with any of those contacts in that center there, the garment center or clothing center?

A. No.

Q. So that in so far as you are concerned, there would be absolutely no embarrassment to render a verdict in this case which is in consonance with justice?

it is right.

In respect to the clothing truckers, did you have contact with clothing truckers?

Direct, no.

Can you understand what I mean by clothing truckers? Clothing truckers that I refer to are those who transport men's clothing to the manufacturers and from the manufacturers out for distribution. In other words, they are pieces that have been cut and ready to be sewed up and delivered from that place after the clothes are assembled somewhere else. It is a peculiar type of trucking that is used particularly in the garment and district.

Did you ever have anything to do with it?

In the Brownsville-East New York section, do you have contacts there?

On the Brooklyn waterfront?

Do you know intimately or do you know socially any officials of the Amalgamated Clothing Workers of America?

Well, not socially or not in business, but when I was in the Government, I had dealings with—I don't know what position he held in the union.

What was his name?

I don't know.

Q. So that, whatever that contact was, it was not one that you have not even remembered the name?

Not even hear the name.

Do you have any social acquaintance with any officials of the Clothing Trucking Union?

Were you in court when I asked the names of certain officials?

Yes.

Is there any familiarity to any of those names?

Can you understand that these defendants here are charged with the crime of murder in the first degree, and that anything about the nature of the charge, namely, the crime in this case, that would prevent you from being a fair juror to the People of the State of New York and sitting as a juror at the bar?

A. No.

Q. I take it, then, that you have no scruple, conscientious or otherwise, against capital punishment.

A. No.

Q. These three defendants have nine lawyers, and when I mention the number of lawyers, to be sure, I find no fault whether they have one, nine, or fifty-nine. Men charged with crime have a right to have counsel, the kind of counsel they want and the number of lawyers they want. You understand that?

A. Right.

Q. And the District Attorney finds no fault with them. Did you hear me state the names to the other jurors of the nine lawyers in the case?

A. I have.

[fol. 2008] Q. And their past connections?

A. I have.

Q. Do you know any of these nine lawyers?

A. No.

Q. Or anyone associated with them in the practice of law?

A. No.

Q. Or any member of the bar who specializes in the defense of criminal cases?

A. No.

Q. Since you received your jury notice, did anybody speak to you about the merits of the case?

A. No.

Q. I take it you are in sympathy with law enforcement.

A. Yes.

Q. Have you heretofore served as a juror in a criminal case?

A. I have.

Q. Has it been in the County Court?

A. Yes, in Oxford Street.

Q. And did the case go to a conclusion, by that I mean did the judge charge on the law?

A. He did.

Q. Did you in that case follow the Judge's instruction on the law?

A. I did.

Q. And did you apply it to the facts in the case?

A. I did.

Q. If selected as a juror in this case, will you do that,

take the law from the Judge and apply it to the facts in the case?

A. I will.

Q. Did the case you had rest in part upon the testimony of an accomplice?

A. I don't believe so.

[fol. 2009] Q. Did you hear discussions about accomplice testimony?

A. In court here?

Q. Yes.

A. I have.

Q. I will make this thing very brief: Do you find any fault with the District Attorney of the county, Judge O'Dwyer, or with the prosecution, which, in order to solve a murder case accepts the use of the testimony of one of the perpetrators of the crime and uses that against the remaining defendants?

A. No.

Q. I take it, then, that your frame of mind is that you understand that even a bad man can at times tell the truth?

A. Yes.

Q. And that with respect to any accomplice in the case it will be your job to see if he tells the truth; is that right?

A. That is right.

Q. In other words, is he telling the truth with respect to the group or combination participation in the commission of this murder with these defendants? Is that right?

A. Yes.

Q. The Judge will give you tests that you apply to the testimony of an accomplice. The law requires that he instruct the jury on the tests to be applied to the accomplice witness. Do you follow me on that?

A. Yes.

Q. Those tests require that the jury look at the testimony and view the testimony of an admitted accomplice, [fol. 2010] an admitted perpetrator, or one who, in fact, is a perpetrator or an accomplice, with care, caution, and suspicion. Do you follow that? Will you take that instruction of law and apply it to the facts in this case?

A. I will.

Q. Will you keep uppermost in your mind and will you use your mental faculties to ascertain is this accomplice telling the truth as to the complicity of the defendants and himself in the commission of the murder?

A. I will.

Q. You see, that is the reason that you apply these tests to find out is he telling the truth about these defendants.

A. That is right.

Q. Do you understand that?

A. That is right.

Q. The Judge will also tell you that even if you could believe the testimony of the accomplice and even if, in fact, you did believe everything the accomplice said about the defendants, that still is not enough, and would direct you to acquit them. Would you follow that instruction?

A. I will.

Q. Suppose the Judge, in telling you what other evidence is needed, instructs you in words or substance as follows: Suppose he says corroboration or independent evidence need not support and corroborate the accomplice in every detail of his testimony. Do you understand that?

A. Yes.

Q. But that it may be deemed sufficient by a jury when believe and it tends to connect the defendants with the commission of the crime. Do you follow me on that?

A. Yes.

[fol. 2011] Q. Will you accept that instruction?

A. I will.

Q. Now, it may be that you may not like an accomplice, you may listen to his testimony and you may not like him as a person or as an individual, you may not like him for a lot of reasons, because of his admitted participation in the crime, because of his past criminal history, and because of other things about him, as a matter of fact, you may have an utter contempt for him. Will you, nevertheless, understand and keep your mental faculties alert to ascertain not whether you like him or dislike him, but whether he is telling the truth about the men on trial; is that correct?

A. Yes.

Q. You see, if you are satisfied that the defendants are guilty of murder in the first degree beyond a reasonable doubt, whether you like the accomplice or not or whether you can do something to the accomplice or not, you understand what your duty is with respect to the case?

A. I do.

Q. Of course, in business as an accountant I take it that you have problems that you work out by the exercises of your mental faculties?

A. Right.

Q. That is how you earn your bread and butter?

A. That is right.

Q. Will you use common sense and understanding in weighing the issue of this case, the guilt or innocence of these defendants on the charge of murder in the first degree?

[fol. 2012] A. I will.

Q. It has been said by one of the lawyers for the defendants, and properly so, that the defendants in this case have only one charge to meet, the indictment, the Rosen murder charge.

A. That is right.

Q. Do you follow that? Do you understand by the same token that the burden of the District Attorney to establish guilt is likewise limited to that charge and the charge alone?

A. That is right.

Q. And that if you are satisfied from the proof in this case that these defendants are guilty of the Rosen murder as charged in the indictment, and you believe that beyond a reasonable doubt, you understand what your duty is as a juror, do you not?

A. That is right.

Q. It has also been pointed out by one of the lawyers representing the defendant Buchalter that Buchalter has been found guilty of crime, as a matter of fact, of crime, as he said, and that he is now paying the penalty for those crimes by way of present incarceration. Would you, because a man is paying the penalty for crimes he has been convicted of, relax your duty with respect to the criminal charge here?

A. No.

Q. Or would you deviate from a proper result because he is presently in jail for some other crime he has been convicted of?

A. No.

[fol. 2013] Q. In other words, Mr. Wilkens, will you use your mental faculties to find out is Buchalter and the other defendants established guilty of this murder charge beyond a reasonable doubt?

A. That is right.

Q. I should, in passing, of course, ask whether you know the District Attorney of the county, Judge O'Dwyer, personally.

A. No.

>

Q. Or do you know any Assistant District Attorney on the staff?

A. No.

Q. With respect to the application of testimony in a case where there is more than one defendant on trial, the Judge will give you certain rules of law, and will you follow those rules of law?

A. I will.

Q. Where you see that by applying the rule of law, part of the evidence which emanates from one witness or another applies to only one defendant, will you apply it to that particular defendant?

A. I will.

Q. And where, in pursuance of the instruction of law, you see that the testimony applies to two or all three of the defendants, will you, of course, apply it where it belongs, in consonance with the rules charged?

A. I will.

Q. Will you, if selected as a juror in the case, endeavor by your verdict to render justice in the case?

A. I will.

Q. Will you, if selected as a juror, discuss this problem in a common-sense, logical way with the other jurors [fol. 2014] in the case?

A. I will.

Q. And will you, if selected as a juror, keep uppermost in your mind and keep your mental faculties alert to the one issue that we have in the case: Are the three defendants guilty of murder as charged in the indictment, or are they innocent? Will you do that?

A. I will.

Q. And in applying every test and every rule to the believability of witnesses and in watching the evidence and in guiding yourself as to what you hear here, will you keep your mind attuned to the fact that that is your job, to find out are they guilty or innocent of the murder charge?

A. That is right.

Q. After you have heard all the evidence in the case and the presumption has satisfied you by believable evidence that these defendants, Buchalter, Capone, and Weiss, are guilty of murder in the first degree, will you reflect that finding in your verdict in the case?

A. I will.

Q. And will you do so without fear or without hesitation?

A. I will.

Q. Mr. Cross, you are listed as living at 878 Fifty-third Street; is that correct?

A. Yes.

Q. Is that commonly known as Bay Ridge?

A. Yes.

Q. Have you lived in Bay Ridge for a number of years?

A. I have.

Q. More than five?

A. Yes.

[fol. 2615] Q. Before you lived in Bay Ridge did you live in some other district of Brooklyn?

A. Always in Bay Ridge.

Q. You are listed here as a draftsman.

A. That is right.

Q. Is that the drawing of plans?

A. Yes.

Q. Are you employed, or do you do that as a profession for yourself?

A. I am employed.

Q. Who employs you?

A. Consolidated Edison.

Q. I take it that the drawing of plans requires the operation of the mind in setting your mental operations down on paper so they are visible for somebody else to do the work from?

A. That is right.

Q. Have you served as a juror before?

A. I have.

Q. Has it been a criminal case?

A. No.

Q. Civil case?

A. Yes.

Q. Of course, there is nothing mysterious about the job of a juror, is there?

A. No.

Q. You are here to find out are these men guilty or innocent of the charge?

A. Yes.

Q. And if accepted as a juror in the case, will you apply your mental faculties to find that out?

A. I will.

Q. I will go along with you very rapidly because you must have heard the questions that I put to Mr. Wilkins. If I were to ask you the questions that I asked him, would you make substantially the same answers?

A. I would.

[fol. 2016] Q. Can I be assured that, as I go along, that you have no bias against Judge O'Dwyer, the District Attorney of the county, or against the prosecution of an indictment wherein the testimony of an accomplice is used against other defendants?

A. No.

Q. That you will listen to the testimony of an accomplice and find out is the accomplice telling the truth about these defendants and himself when he speaks of their connection with this case?

A. I will.

Q. Should the Judge charge you, as I told Mr. Wilkins the Court will, with respect to the degree of care and caution and suspicion that you examine the testimony of an accomplice, will you with common sense and understanding apply the rules the Judge gives you to the testimony in the case?

A. I will, yes, sir.

Q. Will you also bear in mind that our inquiry is not as to whether anybody likes or dislikes an accomplice, that is not what we are here to determine, whether you like or dislike the accomplice. You may have an intense dislike for him, I do not know, after you hear the case, but your inquiry is directed to find out does he tell the truth about these defendants on trial. Do you understand that?

A. Yes.

Q. And will you, sir, if accepted as a juror, apply your mental faculties to find out that, does this accomplice [fol. 2017] tell the truth about the group or combination participation of these defendants in the murder charged in the indictment?

A. I will.

Q. As has been pointed out by Mr. Rosenthal in one of his questions, the defendants here are required to meet only one charge, the charge set forth in this indictment, the Rosen murder charge. Do you understand that?

A. Yes.

Q. And do you understand by the same token that the District Attorney is obligated to establish beyond a rea-

sonable doubt only one charge, that is, the Rosen murder charge? That is the limit of the inquiry before this jury; that is all we go into, is guilt or innocence on this charge. You understand that?

A. Yes.

Q. With respect to the past crimes which Buchalter has been convicted of and for which he is now serving a jail term, as has been disclosed by his attorney, would you be inclined, because he is now in jail for other crimes he has been convicted of, to relax your duty as a juror in this murder charge?

A. I would not consider it.

Q. You are going to find out, Mr. Cross, are you not, whether the guilt of Buchalter and each and every defendant in this case, Capone and Weiss as well as Buchalter, has been established beyond a reasonable doubt on this charge?

A. Yes.

Q. Do you know Judge O'Dwyer personally, or any member of his staff?

A. No.

Q. Do you know any of the nine defense lawyers?

A. No.

Q. Or any member of the bar who tries criminal cases as a specialty?

A. No.

Q. If you are selected, Mr. Cross, as a juror, will you endeavor by your verdict to do justice in the case?

A. I will.

Q. Will you listen to reason and common sense from the other jurors?

A. Yes.

Q. Talk the case over with them logically?

Should you, after you have heard all the evidence in the case, come to the conclusion and be satisfied that the guilt of the defendants, Buchalter, Capone, and Weiss, has been established beyond a reasonable doubt to your satisfaction, will you say that in your verdict?

A. I would.

Q. Would you be afraid to say it?

A. No.

Q. Would you hesitate?

A. No, sir.

Q. Mr. Kane, do you live at 319 Eighty-second Street?

A. That is right.

Q. I guess that is Bay Ridge too?

A. Yes.

Q. By whom are you employed?

A. Brooklyn Trust Company.

Q. How many years have you been working there?

A. Ten years.

Q. I have asked a lot of questions of other prospective talesmen that you may have heard while you were in this box or while you were seated out there.

[fol. 2019] A. One of the questions you asked, Mr. Turkus, was was there any reason why—I am a bachelor. I live with my mother, an old lady eighty-five years of age, in very poor health, and if I am kept away from the home for any length of time—

Q. I understand the circumstances. I am in the same boat. We will see what the Judge says about it.

The Court: I did not hear a word.

Mr. Turkus: Mr. Kane has advised me that he lives with his mother, who is elderly, eighty-five, and that if he is kept away from his home it will work a hardship on this elderly woman who is, of course, in consequence left alone.

By the Court:

Q. Nobody else there?

A. Nobody else there, your Honor. I have a lady during the day, until I get home at night.

Q. Did you apply for excuse?

A. I did not. I thought maybe I would be able to serve, your Honor, but in the last few weeks she has had a couple of weak spells, and I could not concentrate.

Q. Is that the answer, you would not be able to give attention to the trial of the issue if you sat there and were sworn as a juror?

A. I could not.

The Court: Does anybody challenge?

Mr. Barshay: We consent.

[fol. 2020] The Court: That is a bad precedent.

Mr. Rosenthal: We challenge and we have no questions.

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HARRY J. KANE, residing at 319 Eighty-second Street, Brooklyn, New York, being duly sworn, testified as follows:

By the Court:

Q. Would all of your answers be the same?

A. What do you mean?

Q. That you would not be able to concentrate?

A. No.

Q. Your mother is really very sick?

A. Eighty-six years old.

The Court: Sustained.

(A ten-minute recess was taken, during which the defendants were remanded.)

(After recess the examination of talesmen continued.)

By Mr. Climenko:

Q. Mr. Halperin, I will address these questions exclusively to you for the moment. Did you say that you were employed by the Halperin—

A. Halmor Properties Corporation.

Q. May I ask the names of your employers in that corporation?

A. What do you mean by the employers?

Q. Are you a principal in the company?

A. No.

Q. What is the name of your employer, if I may ask?

A. You mean the officer of the corporation?

Q. That is right.

A. Louis Halperin, Emanuel Halperin.

[fol. 2021] Q. Are you related to Meyer Halperin of 26 Court Street?

A. Yes.

Q. Did I understand you to say that you manage some real estate and building of which somebody by the name of Cohen was a tenant?

A. Yes.

Q. In consequence of that incident, do you have any impression or opinion about anybody else in this case?

A. Not about anybody else, no.

Q. Do you have any feeling about any defendant in the case by reason of your experience as a real estate agent?

A. No.

Q. Have you read about this case?

A. Just one article in *P. M.*

Q. Was that on August 4, 1941?

A. Some time, about.

Q. About the time you first appeared here to serve as a juror, is that right?

A. About.

Q. Did you gain any impression about any person in this case from the reading of that article?

A. I don't think so.

Q. As you sit here now have you by reason of any experience in your past life or anything that you have read, any prejudice against any defendant in this case?

A. No.

Q. Are you acquainted with any member of the police force?

A. No.

Q. Have you ever discussed this case or any of the defendants in it with any person?

A. Yes.

[fol. 2022] Q. I mean any of the defendants presently in this case.

A. No.

Q. Have you ever listened to any conversation carried on by other persons about any of the defendants presently in this case?

A. No.

Q. You have no opinion with respect to the innocence of any of the defendants in this case?

A. I had a conversation with Mr. Joseph here.

Q. When was that?

A. That was about four or five months ago, maybe longer.

Q. You mean Mr. Joseph, who sits with Mr. Turkus?

A. That is right.

Q. An Assistant District Attorney in the office of Mr. O'Dwyer?

A. I do not know what office he holds.

Q. At any rate, he is the gentleman now seated at the counsel table?

A. Yes.

Q. Did you discuss or did he discuss with you this case or this indictment in that conversation?

A. Yes.

Q. He did?

A. Yes.

Q. In consequence——

Mr. Rosenthal: We challenge for cause.

The Court: Try the challenge.

MORTIN HALPERIN, of 789 St. Marks Avenue, Brooklyn, New York, being duly sworn, testified as follows:

[fol. 2023] By the Court:

Q. Are the answers heretofore given true?

A. Yes.

Mr. Climenko: We press the challenge.

Mr. Turkus: I want to get the record straight, because Mr. Joseph——

By Mr. Turkus:

Q. That was in pursuance of an investigation conducted by Mr. Joseph with respect to the piece of property on Eastern Parkway wherein you had a tenant by the name of Philip or Farvel Cohen?

A. I would not know his first name.

By the Court:

Q. And official business?

A. Yes.

The Court: But it disqualifies you. You are excused.
Challenge sustained.

By Mr. Climenko:

Q. Mr. Wilkens, do I understand that as an accountant you more or less recently worked for the Federal Government?

A. That is right.

Q. In its Treasury Department?

A. That is right.

Q. How recently did you sever that connection?

A. 1939.

Q. And how long had you been in the employ of the Treasury Department?

A. Four years.

Q. Before that had you engaged as an accountant on your own behalf?

A. That is right.

Q. Did you specialize in any particular type of work [fol. 2024] for the Government, the Treasury Department?

A. I did.

Q. Will you tell me?

A. Excise taxes.

Q. Of course, even with respect to excise taxes there are fields of specialization, are there not?

A. That is right.

Q. Did you specialize in any particular field?

A. The excise, and, if necessary, the income tax.

Q. Were you ever connected with the Miscellaneous Tax Unit?

A. That is the Miscellaneous Tax Unit.

Q. Did your work bring you into what is called the fur section of New York?

A. That is right; fur and cloak and suit, women's cloak and suit.

Q. In so far as they made use of furs?

A. That is right.

Q. And the special taxes going to the Federal Government in reference to the use of furs in garments?

A. That is right.

Q. Had you read about this case at any time?

A. Yes, at the time it happened.

Q. In 1936, you mean?

A. That is right.

Q. Have you read about it since?

A. Not to any extent. When I received the subpoena prior to August 4th I was just anxious to know what the case was, being it was the summer time. Then I discovered what the case was.

Q. And you discovered that from the reading of what, Mr. Wilkens?

A. Some newspaper article.

Q. Do you recall in what paper?

A. It would either be the *Tribune* or the *Sun* or the *World*-[fol. 2025] *Telegram*.

Q. So that you read in one of those papers about this case on that day, on August 4, 1941?

A. Yes.

And did you thereafter read anything about this case in newspaper?

No, not to any extent. Maybe just glanced at the paper.

Well, without trying to define any extent for the moment, did you read about it in any other newspaper or any time?

No, no other newspaper.

So the only time you read about this case in the newspaper was on August 4, 1941?

Yes.

You have not read about it since?

No.

Have you read about any of the defendants?

Prior to August 14th? I did.

In consequence of your reading did you develop an impression or opinion about any of the defendants in this case?

Well, at the time I read about them it was not pertinent to this case at all.

I understand, but I am now asking you generally, with respect to all the reading, the reading about this case, the reading about the defendants. In consequence of that reading generally, have you formed an impression or opinion about any of the defendants in this case?

Well, not alone from the reading, no.

You mean what might also have contributed to the formation of an impression or opinion may have been some other activities, such as conversation?

That is right.

In other words, you were a participant in conversation with others about this case or about some or more of the defendants; is that correct?

That is right.

Those conversations recent, Mr. Wilkens?

No.

How long ago?

Around 1936.

Since 1936 have you had any conversation about any of the defendants in this case?

That is hard to say. Maybe casually there may have been discussion at the time of some other case before the courts.

Q. Some other case about perhaps one of the persons on trial in this case?

A. That is right.

Q. Have you ever heard about these defendants in other ways besides conversations and reading?

A. No.

Q. In consequence of the conversation and the reading an impression or opinion has been formed in your mind about one or more persons in this case; is that correct?

A. That is right.

Q. Is that an impression or opinion?

Mr. Turkus: I object to the dual expression. Let us find out what it is, whether it is an impression or an opinion.

Mr. Climenko: I will wait your Honor's ruling. I will do it either way.

The Court: Sustained for that reason.

[fol. 2027] Q. Do you have an opinion about any of the people in this case from your reading and your conversations?

A. I would not say an opinion; I would say an impression.

Q. Now, is that impression adverse to any of the persons on trial in this case?

A. Yes.

Q. When did you first form that adverse impression?

A. Well, I would say at the time that the defendant that I am talking about was taken in custody.

Q. At that time you were working for the government, were you not?

A. That is right.

Q. So that your attention was perhaps centered on that circumstance?

A. That is right.

Q. And so you formed that adverse impression at least some substantial period ago?

A. That is right.

Q. And you have entertained it all the time, have you not?

A. That is right.

Q. The mere fact that you received a summons to come here, perhaps act as a juror, that fact in and of itself did not reject that feeling from your mind, did it?

A. No.

Q. You still have it as you are here now?

A. That is right.

Q. And nothing has happened in the interim over that period of time to eliminate it from your mind?

A. No.

Q. Is that correct?

A. That is right.

Mr. Climenko: Now, if your Honor pleases, I respect-
[fol. 2028] fully challenge Mr. Wilkens for implied bias.

The Court: Try the challenge.

GEORGE F. WILKINS, residing at 342 Park Place, Brooklyn, New York, being duly sworn, testified as follows:

By Mr. Climenko:

Q. Mr. Wilkins, I have just asked you before you were administered the oath about your reading in the past and your conversations about one or more persons who are on trial in this case, and my question to you now, sir, is this: If I were to repeat those questions to you now that you are under oath, would your answers be the same under oath?

A. They would.

Mr. Climenko: I press the challenge.

By Mr. Rosenthal:

Q. Mr. Wilkins, at the time that you formed this impression you were in the employ of the United States Government, is that right?

A. Well, I cannot say that I formed the impression against the defendant at that time.

Q. You had formed an impression— Withdrawn.

Q. How long were you with the United States Government?

A. Four years.

Q. And what did those four years consist of, what period of time?

A. The early part of '35 to 1939.

Q. So that when you first read was in 1936; is that right?
[fol. 2029] A. I did not read it first. I heard about it first.

Q. You heard about it. Now then, with respect to the particular individual that you have in mind, discussions were had while you were in the employ of the Government concerning him, is that it?

A. That is right.

Q. And then you said, I think, on your examination by Mr. Climenko, that at the time that he was taken into custody you had other discussion?

A. Yes.

Q. Was that with Government employees, some of your discussion?

A. No, not with Government employees.

Q. With outside persons?

A. That is right.

Q. In respect to the particular person whom you are talking about?

A. That is right.

Q. In your official capacity as a Government employee, was that one of the things involved?

A. I don't get—

Q. I say, was part of your talk with these persons outside of your place of employment in respect to your duties as a Government employee?

A. It was outside of my connection with the Government.

Q. Maybe I don't make myself clear. You said you were with the Tax Department of the Government; is that right?

A. That is right.

Q. You said that you had connections up in the garment center due to your duties as a tax man for the Government. [fol. 2630] A. That is right.

Q. The persons that you spoke to in respect to the particular individuals, were they in and about the garment center?

A. That is right.

Q. And it was in connection with your duties as a—
Withdrawn.

Q. You were a special agent, weren't you?

A. That is right. I was in the Intelligence unit.

Q. With the Intelligence?

A. That is right.

Q. And it was as a part of your duty in the Intelligence Unit that you went out to investigate, wasn't it?

A. That is right.

Q. And that is where you gained your information, part of it?

A. The information about what?

Q. About this particular individual.

A. No, I did not go out for the purpose of getting information about this individual.

Q. But you did, while you were in the Intelligence Unit of the United States Government, doing work in the garment center, have conversations with individual- in respect to this particular individual?

Mr. Turkus: That is objected to. It is already answered.

A. That is right.

The Court: The Court is satisfied this man should [fol. 2031] not sit on the jury.

Mr. Turkus: That is the end of it.

The Court: His occupation, taken in connection with information that he is alleged to have received, disqualifies him just as much as if he were a policeman or a detective in the employ of the City of New York. Anything more?

Mr. Rosenthal: No further questions.

The Court: Sustained.

By Mr. Clemenko:

Q. Mr. Cross, when we first met here in August or in the middle of September did you make application to be excused?

A. I did.

Q. Did the reason which impelled you to make that application, has that reason since been dispelled?

A. That is right.

Q. Have you ever read about this case or any of the defendants named in it?

A. No, sir.

Q. What newspapers have you read?

A. I read the *Telegram*. I read the *Times* in the morning and the *News*.

Q. And you have never read about this case in any of those papers?

A. No, sir, I avoided it.

Q. In other words, if your eye ever met any printed matter in connection with it, you deliberately avoided it?

A. That is right.

Q. Prior to the time that you obtained the notice to [fol. 2032] appear here as a special juror, had you ever heard of any of the defendants named in this case?

A. No, sir.

Q. At no time?

A. No.

Q. So that not until the time you actually came to this court-room had you heard of any of the people named as defendants here?

A. That is right.

Q. And you had never heard any discussions about them?

A. No, sir.

Q. And of course you had never participated yourself in any discussions about them?

A. No, I have not.

Q. Are you acquainted with Mr. O'Dwyer, the District Attorney?

A. No.

Q. Are you acquainted with any member of his staff?

A. No.

Q. Are you acquainted with any member of the police force, particularly here in Brooklyn?

A. No.

Q. You said, I think, that you had once served as a juror in a civil case; is that correct?

A. Yes.

Q. But you never served in a criminal case?

A. No, I have not.

Q. You work for the Edison Company?

A. That is right.

Q. And you have been there for some years?

A. Twenty years.

Q. Have you from time to time attended lectures given for the associations or employees of that company?

A. No.

Q. You have never attended any lectures under the [fol. 2033] auspices of your employer, the Edison Company?

A. I attended school, educational course.

Q. No, I did not mean that.

A. Then I would say no.

Q. The only lectures you attended there were technical in connection with the actual doing of your draftsman work?

A. Yes.

Q. Did you ever attend any lecture given by any member of the District Attorney's staff?

A. No, sir.

Q. Never heard any of those gentlemen speak?

A. No.

Q. Is there anything in your experience which in your mind would interfere with your listening impartially to the testimony in this case?

A. No.

Q. There is not?

A. No.

Q. Assume that the Court shall instruct you as a matter of law that the defendants or any of them, none of the defendants is under an obligation to adduce any testimony in this case. You understand that?

A. To testify.

Q. No defendant has to testify at all if he elects not to. Assume you were instructed as a matter of law and assume that at the conclusion of the trial a particular defendant may have elected not to testify, would you hold that against that particular defendant?

A. No, sir.

Q. Suppose the Court should instruct you as a matter of law that you could not bring in a verdict of guilty against any defendant unless you were convinced of his guilt beyond [fol. 2034] a reasonable doubt, would you have any difficulty in solving that instruction of law?

A. No, sir.

Q. Suppose in explaining that rule of law to you the Court might define it by saying that a reasonable doubt is a doubt which you obtain or which resulted in your mind by reason of something in the evidence in the case, if you had a reasonable doubt about the guilt of any defendant you were under a conscientious obligation under your oath to return a verdict of Not Guilty against that particular defendant, would you have any difficulty in following that instruction of law?

A. No.

Q. Assume that in the course of the case the Court should instruct you that the testimony of any witness offered by the District Attorney as a co-called accomplice should be tested by you with suspicion and in any event with great

care; would you have any difficulty in following that instruction of law?

A. No.

Q. You understand substantially what is meant by all those lawyer-like words?

A. I have an idea.

Q. The idea is that anybody who comes into this courtroom and says, "I took part in a particular crime," is somebody against whom you must exercise all the suspicion that is reasonable for you to entertain against such a person; do you understand that?

A. Yes.

Q. Now, assume that during the course of the trial a so-[fol. 2035] called accomplice not only says that he took a part in the commission of the crime, but says that in the past he has committed the crime of perjury, would you take that factor into account in testing whether or not you could believe him?

A. Yes.

Q. In a general way is there anything that you know of that I have not reached by any question that I have put to you which creates a mental reservation in your mind as to your capacity to sit impartially in this case?

A. No.

Q. You do not have any such mental reservation?

A. No. I think I could be a fair juror.

Q. Can the defendant Buchalter entrust to you the keeping of his legal rights in the course of this trial?

A. Yes, in the case of a doubt.

Q. Assuming—You would respect those rights as they were so defined to you?

A. Yes.

By Mr. Talley:

Q. Mr. Cross, our law requires the District Attorney to prove the guilt of every defendant brought in here under an indictment, and goes a bit further and says the District Attorney must prove the guilt of such defendant beyond a reasonable doubt. That is the burden that the District Attorney takes when a defendant is brought into our American courts. Without passion or prejudice, do you think you can require the District Attorney to sustain that burden?

[fol. 2036] A. I don't quite get the question.

Q. In this country when a charge is made of crime against anybody, no matter what their estate is, high or low, it is our law that the people bringing that charge, as represented by the District Attorney, must prove the guilt of a defendant. To put it in another way, under our law a person charged with crime is not required to prove his innocence. You understand that?

A. Yes.

Q. My question to you is, Are you quite certain that if selected as a juror here you will require under the charge of the Court, The People, represented by the District Attorney, to sustain that burden of proving the guilt?

A. Yes, sir.

Q. Of the defendant?

A. Yes, sir.

Q. And that you will not regard it as your duty as a jurorman to require him to prove his innocence?

A. No.

Q. You know the distinction?

A. Yes.

Q. It is not that way in other countries. In European countries when the charge is made——

Mr. Turkus: I object to it. We are trying a case in America, in Brooklyn.

Q. In some countries it is required when a man is charged with crime he must come in and proclaim or prove his innocence. I am merely citing that to make a contrast between that system which prevails and that which prevails [fol. 2037] throughout this land. Here the burden rests upon the District Attorney to prove the guilt, and you will require them to do that if you are selected as a juror in this case?

A. Yes.

Q. And then the law goes a step further and says the guilt of a defendant must be proven beyond a reasonable doubt, which means that if a juror has in his mind after hearing and weighing and honestly considering all the testimony, if then he has a doubt in his mind for which a reason could be given which is based upon reason, which is the kind of a doubt which a man might have about his ordinary family or business affairs of life, the law requires

if a juror has that kind of a doubt he must exercise it in favor of the defendant. Is that quite plain to you?

A. Yes, sir.

Q. And if, after hearing all the testimony, you have that kind of a doubt, you will resolve it in favor of these defendants, will you not?

A. Yes, sir, I will.

Q. And the law further requires as part of our system in criminal cases, that it is the right of a defendant to take or not to take the stand and testify as he sees fit or is so advised, and it is the law that you shall not indulge in any unfavorable inference against a defendant because he does not take the stand. If in this case any of these defendants do not take the stand, do you agree that you will not indulge in any unfavorable inference against him because of his failure to take the stand?

A. No.

Q. There is no impression, there is no opinion in your mind with respect to the guilt or innocence of any of these defendants as you sit here now?

A. No.

Q. That is correct? And there is no reason, domestic, business, or any other reason in your mind why you could not sit as a fair and impartial juror in the trial of this case; is that correct?

A. That is right.

Mr. Talley: I have no further questions.

By Mr. Rosenthal:

Q. Mr. Cross, I do not know how many questions you have heard or how many you have not heard, but, however, I have to repeat so many of the questions as may apply to the particular client I represent. You understand that?

A. Yes.

Q. Have you in connection in your business had any business in Brownsville?

A. No.

Q. Or East New York?

A. No.

Q. Your business with the Edison did not take you into that territory?

A. No.

Q. What is yours, inside work?

A. Yes.

Q. That doesn't give you much time to read the newspapers?

A. I read going to business and back.

Q. Did you read anything about a man by the name of Abie Reles?

A. No.

Q. Did you read anything about Sholera Bernstein or [fol. 2039] any of those names that Mr. Turkus mentioned at the outset of the trial?

A. Never heard of them.

Q. Did you ever hear or have you any knowledge of a Lieutenant Osnato in the Police Department?

A. No.

Q. Or a Paddy Meehan?

A. No.

Q. McDonough?

A. No.

Q. McCarthy, Swift, Captain Bals—seated over there?

A. No.

Q. You never heard of him either?

A. No, I have not.

Q. The defendant that I represent is Mr. Capone. You understand that each one of the counsel here have their own task in representing their own defendant?

A. Yes.

Q. Have you discussed about the fact that the three men are brought in here together because the indictment charges them with having participated in the same crime? Is that clear to you?

A. Yes.

Q. You understand that that is for convenience, that they are brought in on one trial rather than three trials, so that, involving the same crime and the same people testifying, that it would not be necessary to repeat and take three juries; do you understand that?

A. Yes.

Q. It may be that some of the witnesses that are called in the case by the District Attorney—I do not know whether it will be or not, we do not know anything about that yet—may testify as to one particular defendant and some par-[fol. 2040] ticular thing that that one particular defendant may have done; is that clear to you?

A. Yes.

Q. We won't go into the questions of law. The Judge will tell you sometimes even though you testify against one man, if there is a conspiracy and if the act is in furtherance, it can be used against all of them, but at other times where it is an act of the individual himself it can only be used against him; is that clear?

A. Yes.

Q. Of course, the law on that subject you will take at the conclusion of the case from the Judge. That is clear?

A. Yes.

Q. But you understand that even though three men are on trial together, if any particular part of the testimony is only devoted legally to one man, that when you got into the jury room you can only use it against that particular man?

A. I understand.

Q. Without going into detail have you heard discussed the question of an accomplice's testimony?

A. Yes, I did.

Q. By now, then, you understand that whether there be one accomplice or a hundred accomplices, one is no better than a hundred or a hundred is no better than one as far as the law is concerned?

A. Yes.

Q. Do you understand that there must be other evidence, independent in its source, which must tend to connect the defendant with the crime and believed by you, of course, [fol. 2041] before you can find the defendant guilty; is that clear?

A. Yes.

Q. So far you have nothing in your mind which is adverse to those principles of law, have you?

A. No.

Q. This other evidence—I do not know whether you have heard it discussed or not, may consist of one or more different types of things. What it is in this case we don't know at this time. It may be that the District Attorney may claim that this other evidence consists of someone having said something to somebody of some thing. There are a million different ways. What it is is impossible to determine now, but this much I can ask you at this time, no matter what the source is or no matter what it is that it is contended by the District Attorney constitutes this inde-

pendent evidence, will you, when it comes to looking at that evidence, look at the source from which it comes?

A. Yes.

Q. Now then, if it develops that the particular source, whatever the type of evidence, comes from an individual or individuals who themselves either under examination by the District Attorney admit, or who, because of cross-examination are forced to admit their participation in numerous crimes for which they have either received immunity or don't expect any punishment, and who at one time or another have denied that they even knew the people involved in this alleged crime or their own participation or [fol. 2042] anything of that nature, will you look not only at the source but the motive which the individual may have in telling you the story which he does tell you from the witness stand?

A. Yes, I will.

Q. If, after considering the motive and if after considering the individual and if after considering what he has gained by reason of his going on that stand, you are in doubt as to whether that individual is telling you the truth, would you hesitate then to disregard his testimony?

A. Yes, I would hesitate.

Q. You would not hesitate to disregard it?

A. No, I would not.

Q. And if you disregard it in that form, the independent evidence, and the Judge told you that under those circumstances you must acquit, you would not hesitate to acquit, would you?

A. No.

Q. Now, then, as far as the defendant Capone is concerned, at the present time it is my judgment that he will take the stand, understand, in his own behalf.

A. Yes.

Q. Merely because he is charged with murder does not raise the presumption or idea in your mind that he, being a defendant, necessarily is going to tell you an untruth, does it?

A. No.

Q. Of course, like any other witness for The People or for the defendant, you will consider his background, his motive, or whatever there may be that develops which will [fol. 2043] aid you in determining whether he in this courtroom is telling the truth?

A. I will consider it, yes.

Q. If you believe that he is telling you the truth, the truth from him is just as forceful as it is from anybody else; is that true?

A. Yes.

Q. He may also call witnesses to substantiate. You will study these witnesses also, won't you, their background, whether they have ever been in any trouble for which they have been convicted, or whatever it might be?

A. Yes, sir.

Q. And if these people are in the nature of an alibi—Let me interrupt myself. Did you hear me discuss that question, the question of an alibi?

A. I don't think I have.

Q. I have to go through it again. You understand what the ordinary term Alibi means, don't you?

A. Yes.

Q. Of course, legally, an alibi set up by a defendant means that witnesses take the stand to testify that the defendant was at some other place at the time that the crime is alleged to have been committed. That is an alibi. You do not feel, sir, that merely because a defendant does offer you testimony, that that changes the burden and makes him prove his innocence, do you?

A. No.

Q. Do you understand, sir, at this time, having heard it, that if the evidence of the alibi is sufficient in itself to raise a reasonable doubt in your mind as to whether the defendant is guilty, that doubt, like any other doubt, must [fol. 2044] be resolved in his favor, and you must acquit him?

A. Yes, sir, that is right.

Q. So that if, after listening to the persons who testify on behalf of the defendant as to where he was, you have a reasonable doubt created in your mind as to whether or not this defendant was where these accomplices may say, you will resolve that doubt in his favor?

A. That is right.

Q. Would the mere fact that the defendant might know some of the witnesses who are called by The People and have been in their company at times, would that fact standing alone so influence or prejudice you against the defendant?

A. No.

You can understand, sir, that you may know a lot of
in your life who subsequently may do acts which
meet with your approval?

Yes, sir.

And so the mere fact that you may know an indi-
or even be associated with him, in and of itself
not prove that you know what particular activity
he engaged in at a particular time, isn't that right?

Yes.

So you see that the mere knowledge or association,
you are convinced that that association itself had
nothing to do with this crime—of course, if you are con-
vinced of that, that is different—but the mere association
would not influence you to the detriment of the
defendant, am I right?

Yes.

You heard the District Attorney also say about
[045] whether you have any objection to the case
being solved from the inside, broken from the inside—he
used several expressions. You heard that?

Yes, I did.

Do you realize that when an accomplice so-called—
does not admit he is an accomplice of ours but the law
says he is an accomplice of those who were engaged with
the crime—that is clear—when the so-called accomp-
lice takes the stand and admits that he committed the act
of the acts which resulted in the death of this man,
in being telling the truth, unquestionably he is telling
the truth concerning his activity; you understand that to

Yes.

But you understand your duty is not to find out
whether he is telling the truth about himself, namely, that
he killed a man; your duty is to find out whether he is
telling the truth about the defendant?

That is right.

Then he says that they helped him?

That is right.

So that even though you may believe what the
witness says he himself did, you may still disbelieve
what he said about others; is that true?

Yes.

And, having that in mind when you listen to him on
the stand you will give all of these tests which the Court

will subsequently tell you you should give to what you will give to his testimony; do you understand?

A. Yes.

Q. Do you understand further than that, sir, that the [fol. 2046] minute a man goes on the stand and proclaims himself an accomplice that you, sitting in this box, that the law tells you it is your duty to be suspicious of him from the very beginning, be wary of him, view him with extreme caution and suspicion? That is what the law says your duty is, not only when you go into the jury room—you understand that?

A. Yes.

Q. But when he goes on that stand and says, "I, So-and-so, killed that man," you look out, and the law says you have got to be wary, suspicious, and cautious of everything he says from then on; is that so?

A. Yes.

Q. And you will do that?

A. I will.

Q. Leaving out the reluctance, have you any fear or hesitation?

A. No, I have not.

Q. In pronouncing a verdict of Not Guilty in the event that you are not convinced of the defendant's guilt beyond a reasonable doubt?

A. No.

Q. There is a new word used by Mr. Turkus, "Have you got the courage to come in"—

Mr. Turkus: I did not say that.

Mr. Rosenthal: Yes, you did.

Q. Have you got the courage to come in with a verdict of Not Guilty?

A. I have.

Mr. Turkus: Mr. Cross is satisfactory to The People of the State.

Mr. Cuff: Satisfactory to the defendants.

[fol. 2047] (Harold F. Cross takes Seat No. 9 in the jury box.)

(The following talesmen were called and took their places in the jury box: John J. Patten, of 131 Tehama Street;

Philip Geth, of 207 East 93rd Street; James F. Kelly, of 535 Seventy-fourth Street.)

Mr. Turkus: May I inquire as to the length of time the Court will work?

The Court: It is very unfortunate Mr. Klein does not come over here to relieve you.

Mr. Turkus: I want to select the jury myself. I do not want Mr. Klein to select the jury.

The Court: I know, but you are entitled to reserve your strength for your work in the trial so that it may proceed without interruption.

Mr. Turkus: There is no way I can do that. If I want to pick the jury, I cannot have Mr. Klein pick the jury.

The Court: There are nine lawyers for the defense, and they divide up the work, and there is no reason why the prosecution cannot decide to divide up the work. It is done in trials constantly. I think there is such a thing as being——

Mr. Turkus: Stubborn about it.

The Court: Maybe too ambitious in wearing yourself out. Supposing you try to go ahead.

Mr. Turkus: How long will you work, Judge?

The Court: Don't worry about that.

[fol. 2048] Mr. Turkus: I ate a very light lunch. My brain is tired. Now I need something to eat.

The Court: Get a glass of Coca-Cola.

Mr. Turkus: All right, if that is the way you want to do it, we will go to work.

The Court: Mr. Turkus, I sympathize with you because you look tired, and I feel sorry for you.

Mr. Turkus: I will go right ahead.

The Court: Don't let it disturb you. Do the best you can. When you cannot go any further let me know. I am not going to be a hard taskmaster.

Mr. Turkus: I will finish this job with the three jurors and stay here as long as you will.

By Mr. Turkus:

Q. Mr. Patten, do you live on Tehema Street?

A. Yes.

Mr. Talley: Judge, we family men have some domestic arrangements that have got to be considered. I would like

to know as soon as it is convenient to your Honor whether we are going home or whether we have to say we won't be home.

The Court: I think I sense what the source of worry is. You will recall in the conference that was in chambers yesterday when Dr. Nash was there that notwithstanding his findings he cautioned that in regard to one of the defendants it might be wise, in fact, it would be unwise to have night sessions, and take a chance with his health.

[fol. 2049] Mr. Talley: Yes, sir.

The Court: As it might cause undue strain.

Mr. Talley: Yes, sir.

The Court: For that reason I did not intend to sit after the supper hour, because we don't want a mistrial, but I did intend to try to put in an honest day's work. I have been so tired the last few nights I have not been able to eat a meal. I have had to be satisfied with a couple of eggs, and I know how counsel feel and sympathize with you. It is a nerve strain all around. If you understand I am entirely in sympathy with all of you, I think we will all get along better. If you really are tired, Mr. Turkus—

Mr. Turkus: I can take it if I have to. I am tired. The thing gets monotonous. Sometimes you ask these questions when you get home at night. This thing is getting terrific.

The Court: You try those three men.

Mr. Turkus: I cannot finish three men in less than an hour.

A Talesman: Your Honor, may I say something?

The Court: You have started something.

No. 11: I have a very, very severe headache. I cannot even see very well.

The Court: Members of the press were so tired that one of the press representatives applied some time ago in my medicine closet for some aromatic am-onia to stimulate [fol. 2050] him to do his work.

Mr. Turkus: In a half hour's time what are we going to gain? One juror has a headache, I am tired; they are all disgusted. We want to go home. Mr. Barshay worked all night, he tells me, on some other matter. I think enough is enough.

The Court: I would like to finish this jury by tomorrow night.

Mr. Rosenthal: We would like to, too, but you must realize, out of 250 men there are only a few left, and ninety per cent of them are cause. That is not the fault of anybody. They are entitled to their opinion and we are entitled to the truth. It is not anybody's fault.

The Court: I will direct the drawing of an additional sixty, because there are only five outside of the box remain-[fol. 2051] ing for examination. Those five, together with the three gentlemen in the box, I think will be reasonably taken care of tomorrow. The drawing cannot occur, of course, in time to get the rest here before the beginning of next week. If the jury is not completed with those in the room by tomorrow night, we will have to take the end of the work out of a new panel. I am directing the drawing of sixty, because many will have business and personal reasons and want to be excused, and I would like to accommodate them as far as possible.

Mr. Rosenthal: Why not draw a hundred, your Honor? You might get fifty excuses out of sixty men.

The Court: All right, if you wish it.

Mr. Rosenthal: We want to get through with this thing also. Why not draw a hundred and see how many you get out of it.

The Court: Draw a hundred. Will you have the order prepared and sent over?

Mr. Turkus: Yes, your Honor. Will it be on consent of all counsel?

The Court: That is agreeable all around. All right, send the order this afternoon and I will wait for it.

Mr. Turkus: You want it this evening?

The Court: If I sign it tonight, the notices can go out in the morning so that they will be delivered by tomorrow [fol. 2052] afternoon's mail.

Gentlemen, please do not discuss the case, let nobody talk to you about it. Keep your minds open. Be in your places at ten o'clock in the morning.

Let the defendants be remanded first.

(Whereupon an adjournment was taken to Friday, October 10, 1941, at 10:00 A. M.)

[fol. 2053]

Brooklyn, N. Y., October 10, 1941.

Trial Resumed

Mr. Turkus: (referring to the drawing of additional jurors.) There will have to be a valid, five-day notice.

Mr. Talley: I would consent to accept short notice on an application to the Court. I will not consent to the entry of the order, but I will accept and consent to short notice.

The Court: On application by the District Attorney for the further drawing of talesmen, do all counsel waive statutory notice?

Mr. Rosenthal: Yes, preserving the rights which are ours so far as our previous objections were concerned in motion form.

The Court: All other rights are reserved; all other exceptions are extended to cover this application.

Is there a waiver of notice by all counsel?

Mr. Talley: We waive notice.

Mr. Rosenthal: I agree on behalf of the defendant Capone.

The Court: Do you agree, Mr. Barshay, on behalf of Buchalter?

Mr. Barshay: Yes.

[fol. 2054] Mr. Turkus: Will your Honor take notice as to the presence now of all the defendants in the court-room?

The Court: They don't have to be in the court-room because it can be consented for them.

Mr. Rosenthal: The District Attorney intended to move for an additional panel of one hundred.

The Court: The Court stated sixty would suffice.

Mr. Rosenthal: And I suggested a hundred, in view of the fact that out of 250 men there were only about 33 peremptories.

The Court: See if you can agree.

Mr. Rosenthal: Because of the various motions that have been made for a change of venue, etc., counsel did not want to consent to anything, but they agree to accept and waive any notice of the application, preserving the rights they may have under their previous motions.

The Court: That is, to waive the statutory notice. That applies to all counsel for the defense?

Mr. Talley: Yes.

Mr. Barshay: Yes.

Mr. Rosenthal: Yes.

Mr. Turkus: Does the record indicate that counsel for every defendant has waived notice?

Mr. Rosenthal: Yes, counsel have waived notice in open court. We have waived the statutory notice.

[fol. 2055] The Court: I understand the order may now be signed?

Mr. Talley: Yes.

Mr. Barshay: Yes.

Mr. Cuff: Yes.

Mr. Rosenthal: Yes.

The Court: Is it consented to or opposed?

Mr. Rosenthal: It is not opposed and it is not consented to. We are passive. We urged the same ground as we urged to previous applications.

The Court: All counsel for the several defendants having waived the statutory notice for the application in open court, three o'clock this afternoon set for the drawing of jurors, returnable on Tuesday, October 14, 1941.

JOHN J. PATTEN, was then examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. The method we have adopted is to ask a question of one juror with the other jurors listening, so it will save time and the repetition of questions which will be similar.

Have you lived at your present address for a number of years?

A. Yes, sir.

Q. Prior to living there where did you reside?

A. I lived in Brooklyn all my life.

Q. Did you ever live in the Brownsville or East New York [fol. 2056] section of Brooklyn?

A. No.

Q. Did you hear the questions put to the other prospective talesmen as to the garment industry and the clothing industry?

A. I did.

Q. Do you have any connection with anyone in those industries?

A. No, sir, I do not have any connection with them but I accept business from brokers and from agents.

Q. At any rate, you have no personal contact or social contact with anybody who manufactures clothes, or ladies' garments, or who trucks clothes in any form?

A. I know people that do it; I do not visit at their homes; it is just an acquaintance.

Q. What I am getting at is, is your livelihood dependent upon the good will of anybody in that district?

A. No, sir.

Q. Are any of the names of the union officials of the Amalgamated Clothing Workers of America familiar to you?

A. No, sir.

Q. Or any of the officials of the clothing drivers' and helpers' union?

A. No, sir.

Q. Did anybody speak to you about the merits of the case since you received your notice?

A. Nothing in connection with the case.

Q. In other words, the discussions you have had were relative to prospective service as a juror?

A. I have in the office with me—I don't know whether this [fol. 2057] is the proper time to say it or not. I don't want to say anything. I will answer your questions categorically.

Mr. Turkus: Something may come out that will affect the other jurors we have already, and it has taken a long time to get them; we do not want to lose them.

Q. Do you understand that these defendants at the bar, Buchalter, Capone, and Weiss, are charged with murder in the first degree?

A. Yes, sir.

Q. Have you any conscientious or other scruples against capital punishment?

A. No, sir, not against capital punishment.

Q. If selected as a juror in the case, will you determine the guilt or innocence upon this indictment without any reference to punishment in the case at all?

A. Well, as I say, so far as accepting the testimony, I think my mind was confused on account of a certain thing.

Mr. Turkus: The juror has endeavored, in all frankness, to tell counsel something, and at the same time does not want to say anything that may interfere with the

prospective members of the panel and with the jurors that have already been selected. I ask that we consult with your Honor before the bench, not within the hearing of the jurors who have already been accepted. May I suggest that the talesman and counsel appear before the bench before your Honor and find out what is in his mind?

[fol. 2058] By the Court:

Q. What is your business?

A. Fire insurance.

Q. And your office is where?

A. 150 William Street.

Q. General?

A. What do you mean by "general"?

Q. A general agency?

A. We are head of the office.

Q. What company?

A. The Royal group.

Q. That is fire insurance?

A. Yes, sir.

Q. What office do you hold?

A. I am City underwriter, having charge of the agency business for New York City and Long Island City for two of the companies.

Q. Where is 131 Tehama Street?

A. Tehama Street is a continuation of Albemarle Road, west, towards 36th Street, and it is about two blocks south of Greenwood Cemetery.

Q. That is over toward 30th Street?

A. Yes, sir, 36th Street, practically 12th Avenue and 36th Street is the location.

Q. Buildings cluster around there?

A. Yes, it is fairly well built up.

The Court: All right, step over here.

(Talesman Patten, Mr. Turkus, and all counsel appeared before the bench, and the following occurred without the hearing of the panel.)

Talesman Patten: My fellow worker, that is, my working partner, was on the jury when one of these defendants was concerned—he spent several weeks on the jury, and [fol. 2059] at that time I was very much interested in

reading the testimony, and after he came back I discussed with him what happened.

Q. What case was that?

A. Gurrah and Lepke case.

Q. You mean in Manhattan?

A. Yes, sir.

Q. The one that was tried in the Federal Court?

A. Yes, sir.

Q. I asked you particularly about that Tehama Street section for this reason: There was a certain establishment very close to where you are, and I was trying to guess as to what it might be. There is a man there who is the general manager of the establishment who was one of the talesman in the Abbando and Maione trial. He was excused. He was also actively interested in a business way, on account of a strike in his plant, where guerrillas were brought in from the outside, and these guerrillas had been hired from a certain gangster. That case found its way into this court.

The Court: (Addressing Mr. Rosenthal.) If this gentleman is challenged for cause, it seems to me the challenge should be sustained.

Mr. Rosenthal: I challenge for cause.

The Court: Try the challenge.

JOHN J. PATTEN was then sworn on the challenge.

By Mr. Rosenthal:

[fol. 2060] Q. If the same questions were addressed to you now as were addressed to you at the bench, would you give the same answers now that you are under oath?

A. Yes, sir.

The Court: Challenge sustained.

PHILIP GETH, a talesman, was interrogated as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. You live at 207 East 93rd Street?

A. Yes, sir.

Q. Is that what they call Kings Highway?

A. Yes, sir.

Q. That is on the fringe of Brownsville and East New York?

A. Yes, sir.

Q. You are listed as a manager?

A. Yes.

Q. What do you manage?

A. Radio appliances.

Q. Where is your office?

A. Lynbrook, Long Island.

Q. For whom do you work?

A. For a corporation that has stores——

Q. They have stores in Hempstead, Rockville Centre, Freeport and Lynbrook?

A. Yes, sir.

Q. The president of your concern is a friend of mine. Did you hear the questions asked of the other talesmen while you were sitting in the chairs waiting to be called?

A. Yes.

Q. Is there anything about the nature of the charge of murder in the first degree which would impair or prevent you from rendering conscientious jury service?

[fol. 2061] A. Yes, sir, there is.

Q. Is there something, you say, that may affect the other jurymen if you say it out loud?

A. Yes, sir.

Mr. Turkus: I think we should hear that before the bench.

The Court: I don't want to start a parade up to the bench. This may be more imaginary than real. Suppose you go ahead with specific questions, and you may find out it is not harmful.

Q. Your job is to decide the question of the guilt or innocence of the defendants upon the evidence.

A. Yes, sir.

Q. Is there something that you know about the case?

A. Not about the specific case, no, sir.

Q. Is there something you know about the defendants?

A. Yes, sir.

By the Court:

Q. By direct knowledge?

A. By direct knowledge.

The Court: Then you may step up here.

(On motion of Mr. Turkus, the talesman, together with counsel for the defense and Mr. Turkus appear before the bench, without the hearing of the panel.)

PHILIP GETH, residing at 207 East 93rd Street, Brooklyn, New York, was questioned.

By the Court:

[fol. 2062] Q. What is the trouble?

A. I have a tenant living at my house that has been associating with one of the defendants.

Q. In what way?

A. I don't know what way, but I know the defendant, as a matter of fact; I know one of the defendants; I met him—I don't know him personally, but I saw him.

Q. What is his name?

A. Buchalter. I met him at a wedding reception about five or six years ago.

Q. Where?

A. In Brownsville.

Q. What hall?

A. I don't recall. I think it was one of those halls along Blake Avenue.

Q. Were Abbando and Maione there?

A. No, sir.

Mr. Barshay: That could be five or six years ago.

The Talesman: About five or six years he was there.

Q. Were Strauss and Reles there?

A. Shapiro.

Q. Were Strauss and Reles there?

A. I don't remember.

Q. Shapiro was killed since.

A. Gurrah is the man, he was there.

Q. Shapiro was there?

A. Yes, sir.

Q. Shapiro was killed.

Mr. Rosenthal: No, that is not this Shapiro.

The Talesman: That was Jacob Shapiro.

Q. Is that a brother?

A. No, sir.

Mr. Turkus: That is a different Shapiro.

Q. One of the Shapiros was killed and then there was a [fol. 2063] backfire when a tire was being changed.

A. I have relatives that live in Brownsville and the East New York section all their lives, the Ruben brothers.

Q. You have too intimate a knowledge—As I recall it, when Shapiro was killed in a rival pinball racket, Bugsy Goldstein and Abbandanda, one or the other, was behind the automobile in front of Rose Gold's candy store one night when a car containing members of the New York gang drove up and opened fire and shot—and I think Bugsy was shot in the neck and Shapiro was killed, if I recall correctly.

A. This is not the same Shapiro.

Mr. Rosenthal: Counsel for defense challenge for cause.

PHILIP GETH, a talesman, was sworn on the challenge.

By Mr. Rosenthal:

Q. If you were asked the same questions now that were asked by the Court before the bench, would you give the same answers?

A. Yes, sir.

The Court: Challenge sustained.

JAMES F. KELLY, a talesman, was then interrogated by Mr. Turkus as to his qualifications.

By Mr. Turkus:

Q. You live at 575 Seventy-fourth Street?

A. Yes, sir.

[fol. 2064] Q. Is that in Bay Ridge?

A. Yes, sir.

Q. You are listed as a teller.

A. Yes, sir.

Q. By what bank are you employed?

A. Bay Ridge Branch of the Savings Bank.

Q. Have you been doing that work for some time?

A. Yes, sir.

Q. Were you in some other line of endeavor?

A. Yes, sir. I was an agent in New York; they handled the output of cotton goods and things like that.

Q. While you were there did you have any contact with people in the garment or clothing industry?

A. No, sir.

Q. I suppose you did office work?

A. Yes, sir.

Q. You have been nine years with the bank?

A. Yes, sir.

Q. Is this your first experience as a juror in a criminal case?

A. No, sir.

Q. Have you served in the County Court?

A. No, sir.

Q. In what court?

A. In the Federal Court.

Q. I take it I can go along with you very readily because of that fact. I suppose you have no contacts in the garment industry or the clothing industry or with the truckers?

A. No, sir.

Q. May I understand you have had no contact in the Brownsville or East New York section of Brooklyn or on the Brooklyn waterfront?

A. No, sir.

Q. So the names I spoke of would not be familiar to you?

A. No, sir.

[fol. 2065] Q. May I go along with the understanding you have had no contact with union officials either in the Amalgamated or the Clothing Truckers or Truckers Union, or any other union?

A. No, sir.

Q. You understand the nature of the charge is murder in the first degree?

A. Yes, sir.

Q. Is there anything about the nature of the charge, namely, murder in the first degree, which would prevent you from being a fair juror in the case?

A. No, sir.

Q. Do you have any scruples, conscientious or otherwise, against capital punishment?

A. No, sir.

Q. Since you were listed for jury service, has anybody spoken to you about the case?

A. Not about the case, just about attendance.

Q. Whatever conversations you had were limited to prospective service as a juror?

A. Yes, sir.

Q. Have you heard me mention the names of nine lawyers.

A. Yes, sir.

Q. Do you know any of them?

A. No, sir.

Q. Or do you know anybody connected with the practice of criminal law?

A. No, sir.

Q. Do you know any member of the bar who specializes in the practice of criminal cases?

A. No, sir.

Q. I take it your hesitation was because you knew some members of the bar?

A. Yes, sir.

[fol. 2066] Q. Do they handle civil cases?

A. I know one.

Q. What is his name?

A. James McGough, Assistant District Attorney.

Q. Do you know Judge O'Dwyer?

A. No, sir.

Q. Do you know any other member of his staff?

A. No, sir.

Q. Is your acquaintance with Mr. McGough such that you can decide this case on the evidence?

A. Yes, sir.

Q. Would you be inclined to run in favor of the prosecution because Mr. McGough is an Assistant District Attorney?

A. No, sir.

Q. I will cut this right down to the bone so we will not waste any time. I take it that you understand by now that part of the State's case rests upon the testimony of co-participants in the commission of this murder?

A. Yes, sir.

Q. And that kind of an individual is known in the law as an accomplice.

A. Yes, sir.

Q. And there are certain rules to be applied to his believability or credibility?

A. Yes, sir.

Q. Will you take those rules and the tests which the Judge gives you?

A. Yes, sir.

Q. Will you, if you are instructed to weigh that testimony with care and caution, do so?

A. Yes, sir.

Q. With regard to the testimony of an accomplice, will you, if selected as a juror in the case, devote your mental faculties to ascertaining does this accomplice speak the [fol. 2067] truth about participation in this murder by the defendants and the part that each in this group or combination played in the commission of that murder?

A. Yes, sir.

Q. You follow what I mean?

A. Yes, sir.

Q. Will you, when you apply those tests, use your mind to find out is this man, the accomplice, telling the truth about these defendants?

A. Yes, sir.

Q. And is he telling the truth about them as a group or combination who committed this murder?

A. Yes, sir.

Q. If it is not clear to you, don't hesitate to say so.

A. It is clear.

Q. Do you find any fault with the District Attorney who, in order to solve a murder case, will avail himself to accepting testimony of an accomplice against the other perpetrators of the crime?

Mr. Talley: I object to the form of the question.

The Court: Objection overruled.

Mr. Talley: Exception.

A. No, sir.

Q. Do you find any fault with the prosecution that uses the testimony of an accomplice against the other perpetrators of a crime?

A. No, sir.

Q. Do you understand it is not a question of whether you like or dislike an accomplice, the thing you have to find out as a juror is, Does he tell the truth about participation [fol. 2068] of these men with him in the commission of murder?

A. Yes, sir.

Q. Will you, if accepted, make that your job, to find out?

A. Yes, sir.

Q. Counsel have been speculating about many things in the proof here, and in asking jurors whether, if they had a reasonable doubt, they would not resolve that in favor of the defendant and bring in a verdict in accordance with that doubt.

A. Yes, sir.

Q. I take it you would bring in such a verdict if you felt there was a reasonable doubt?

A. Yes, sir.

Q. All I want to know from you is this: When we get through giving you all the evidence in the case, and you do not hear speculations that are brought about before you hear the evidence—and your mind is satisfied beyond a reasonable doubt that Buchalter, Capone, and Weiss committed this murder, will you say so in your verdict?

A. Yes, sir.

Q. Will you say that without any fear and without any hesitation?

A. I would.

Q. One of the lawyers for Buchalter brought out that his client has been convicted of a crime and is serving a long jail term as a penalty for the commission of that offense. Would you as a juror in this murder charge relax your duty to The People of the State because a man has been punished for other crimes committed?

A. No, sir.

Q. Would you deviate or go off to a wrong result because of this punishment?

Mr. Barshay: I object to the form of the question.

Mr. Turkus: I withdraw it.

Q. Would you deviate from a proper result solely because he is paying the penalty for other crimes?

Mr. Barshay: I object.

The Court: Overruled.

Mr. Barshay: Exception.

A. No.

Q. You see, I think you understand from all the discussions we had, when I talk of guilt, I mean proved guilt beyond a reasonable doubt.

A. Yes, sir.

Q. My attention has been attracted to the fact that you made an application to be excused.

A. Yes, sir.

Q. Was that in August?

A. Yes, sir.

Q. I take it that whatever reason impelled you to ask for an excuse then has disappeared now?

A. Yes, sir. My folks lived in Jersey, but I would like to do my duty as a juror—although I would like to be excused if possible.

Q. You know you are putting me in a tough spot, because that is not my job. I have to find out if you are qualified. You see, if you are accepted, you have to go along and take these hardships.

A. I know that.

Q. Can you, if selected, apply your mental faculties to a decision in the case?

A. Yes, sir.

[fol. 2070] Q. Will you, if selected, keep uppermost in your mind that what you want to find out is Are these defendants guilty or are they innocent of the crime of murder in the first degree?

A. Yes, sir.

Q. Is there anything I failed to bring out by questioning thus far that goes to your ability to render proper jury service on this trial?

A. No, sir, nothing that I know of.

Q. If selected, will you listen to reasonable argument and discussion of your fellow jurors?

A. Yes, sir.

Q. Taking all instructions of law from Judge Taylor and nobody else in the case?

A. Yes, sir.

Q. Not forming any impression from anything that has been said during the jury selection, either by the defense or the prosecutor, forming your conclusion on the evidence you get in the court-room?

A. Yes, sir.

Q. Do you understand, as was said by one of the lawyers for Capone, and that, of course, applies to all of the defendants, that the defendants are here to meet one charge?

A. Yes, sir.

Q. The charge in this indictment?

A. Yes, sir.

Q. And, by the same token, the obligation of the District Attorney is one equally co-extensive, and that is to establish guilt beyond a reasonable doubt on this charge and nothing else?

A. Yes, sir.

Q. And if the evidence in the case satisfies your mind [fol. 2071] beyond a reasonable doubt that there are three guilty men at the bar of justice, Weiss, Capone, and Buchalter, and you are satisfied of that beyond a reasonable doubt, will you say that in your verdict?

A. Yes, sir.

Q. Courageously and without any hesitation?

A. Yes, sir.

By Mr. Talley:

Q. You said you had done previous duty as a juror in a criminal case?

A. Yes, sir.

Q. How long ago?

A. About twelve years ago.

Q. You were a jurymen?

A. Yes, sir.

Q. In this court?

A. No, sir, in the Federal Court.

Q. Did you sit there through the entire term of that court?

A. I believe two weeks, if I recall.

Q. Is this the first time you have been called in the County Court of Brooklyn?

A. The first time.

Q. Without going into details, will you give us generally the character of your friendship with Mr. McGough?

A. I would not call it a friendship; I only know him to speak to.

Q. Do you meet frequently?

A. No, sir, in fact I have not seen him for several years, until I bumped into him in the corridor here several weeks ago.

Q. Did you ever discuss any criminal matters or matters which have come under his attention since he has been a member of the District Attorney's staff?

A. No, sir.

Q. Did you ever talk about the defendants with him?

[fol. 2072] A. No, sir.

Q. Are you acquainted with any members of the Police Department?

A. I am not.

Q. Have you read anything about this case or about any of the defendants?

A. I have.

Q. In what papers did you read this?

A. I read an article in the *Telegram* and I saw several small excerpts in the *Times*, about the selection of jurors.

Q. Did you read any extended accounts?

A. No, sir.

Q. Any of the tabloids?

A. No, sir.

Q. You read nothing about these defendants?

A. No, sir.

Q. Have you discussed this case, the defendants in the case, with anybody?

A. No, sir.

Q. Have you formed, from any source, any impression about these defendants?

A. Well, no, I have not formed any impression about them. Of course, I read the articles, but that was much prior to this indictment; the only impression I got, I said to myself—but as far as the crime itself was concerned, I did not have any impression whatsoever.

By the Court:

Q. Everybody is supposed to be in favor of law enforcement, one law as well as all laws, but the question is as to your impartiality in the administration of the law where a specific charge is made, so that fair judgment will be rendered.

A. I could be fair, your Honor.

[fol. 2073] Q. What business are you in?

A. Banking.

Q. What bank?

A. The Lincoln Savings Bank of Brooklyn, the Bay Ridge Branch.

Q. What position do you hold in the bank?

A. Teller.

Q. How long have you been there?

A. Nine years.

Q. That used to be the Jamaica Savings Bank?

A. No, sir—Oh, yes, sir, you are correct; the reason I did not know that was that I worked for the Fort Hamilton Savings Bank and they merged into the Lincoln. Of course, I did not know its past history.

Q. The name of the bank was changed twenty-three years ago.

A. That is right, yes, sir.

By Mr. Talley:

Q. Have you formed any impression at all about the guilt or the innocence of these defendants?

A. Not on this indictment, no.

Q. Irrespective of the indictment, outside of the indictment, have you formed any impression about the defendants or any of them?

A. No, I cannot say that I have.

Q. Do you mean that you have not?

A. No, I have not.

Q. There isn't any doubt in your mind?

A. No, sir.

Q. Do you understand that under our law the District Attorney is required to prove the guilt of these defendants beyond a reasonable doubt, before the jury can find a verdict?

A. Yes, sir.

[fol. 2074] Q. When the Court charges you, as he will, that if you have a reasonable doubt after hearing all of the evidence, you must give them the benefit of that doubt, would you do so?

A. Yes, sir.

By the Court:

Q. Is Gas Hasenpflug the president of that bank?

A. No, sir, Mr. Brundage.

Q. Is Mr. Hasenpflug a branch manager?

A. He is not.

Q. Do you say that that was formerly, your branch—that that was the Bay Ridge Savings Bank?

A. No, sir, the Fort Hamilton Savings Bank.

Q. You see, Gus Hasenpflug was at one time for several years connected with this court—and if he was in your

branch I wanted to find out if he discussed any problems with you.

A. No, sir.

Q. I think he is the head of the Bay Ridge.

A. That might be true.

By Mr. Talley:

Q. Do you know of any reason why you cannot sit as a fair and impartial juror in this case?

A. No, sir. But, as I said before, because of my family I would like to be excused.

Q. May I ask, without going into details, just what you mean?

A. My wife has three or four children—I have a baby about three months old. I do not like to leave them.

Q. And all the weeks she will be alone if you were on [fol. 2075] this trial?

A. Yes, sir.

Q. You have no one to stay with her?

A. No.

The Court:

Q. No one at all?

A. No, sir, the family live in Newark, New Jersey.

By Mr. Talley:

Q. You think that situation might distract your mind from a complete, adequate consideration of the issue that will arise in this case—do you think you will be thinking of your wife?

A. As a juror, I would put that out of my mind, because I have a wife and children.

By the Court:

Q. Would your mind be on the home?

A. I think it might be.

Q. You might not be listening intently to all of the evidence?

A. There is that possibility.

Mr. Talley: I think this juror should challenge for cause.

The Court: You might as well be merciful. Try the challenge.

JAMES F. KELLY, residing at 535 Seventy-fourth Street, Brooklyn, New York, was duly sworn on the challenge.

By Mr. Talley:

Q. Before trying this challenge you have not been under oath?

A. Yes, sir.

Q. Now that you are under oath, if I asked you the same [fol. 2076] questions as you are sitting in the witness chair, that I asked you before the oath was administered, would your answers be the same?

A. Yes, sir.

Mr. Talley: I press the challenge.

Mr. Turkus: No objection.

The Court: Challenge sustained.

(At the direction of the Court, the following talesmen were then seated in the box: Fred Sittig, No. 2703; Benjamin Bergman, Jr., No. 2763; Charles F. Wennell, No. 2666.)

FRED SITTIG, was then examined as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. Mr. Sittig, do you live on Lincoln Place?

A. No, sir, Lincoln Road.

Q. Have you lived in Flatbush for a number of years?

A. Yes, sir.

Q. More than five?

A. Yes, sir.

Q. What is your vocation or business?

A. I am now in the printing business.

Q. At some other time were you in some other business?

A. Yes, sir.

Q. Did you have anything to do with the clothing or clothing truckers' business?

A. No, sir, nothing whatever.

Q. Was there trucking?

A. Yes, sir.

[fol. 2077] Q. Whom were you employed by?

A. R. C. Williams & Company, wholesale grocers.

Q. Your work would be limited to the trucking of groceries to the various dealers, bought from salesmen?

A. Yes, sir.

Q. Are you married?

A. Yes, sir.

Q. Do you reside with your family?

A. Yes, sir.

Q. You understand the nature of the charge in this case?

A. Yes, sir.

Q. I want to go along with you very rapidly on contacts in Brownsville, East New York, the garment, the clothing, and the clothing truckers. Did you hear the questions put to the other prospective jurors?

A. Yes, sir.

Q. Do you have any connection with people manufacturing clothes?

A. Only very little.

Q. Would those be for your own use?

A. Yes, sir.

Q. Any other contacts with any manufacturers of garments?

A. No, sir.

Q. In the Brownsville or East New York sections or the Brooklyn waterfront?

A. No, sir.

Q. Were the names of any of the union officials I mentioned familiar to you?

A. The only official I remember is a man named Cashel.

Q. Mike Cashel?

A. Yes, sir.

Q. He is a trucker. Do you know him intimately?

A. No, sir. He was with the union for some time as an official.

[fol. 2078] Q. At any rate, the earning of your livelihood does not depend upon selling to anybody connected with these industries I mentioned?

A. No, sir.

Q. Or in connection with any union officials?

A. No, sir.

Q. Can you, if selected, try this case and render a verdict in consonance with justice?

A. Yes, sir.

Q. Will you, if accepted, do that, render a verdict consonant with justice in this case?

A. Yes, sir.

Q. Since you received your jury notice did anybody speak to you about the merits of the case?

A. Yes, sir.

Q. Was it some member of your family?

A. Yes, sir.

Q. Did you express any opinion as to the guilt or innocence of the defendants?

A. Not me, no, sir.

Q. Did you hear one expressed?

A. Yes, sir.

Q. Was it from someone who knew anything about the particular case or was it by way of an ordinary conversation?

A. Police officers.

Q. Do you know any member of the bar who specializes in criminal cases?

A. Yes, sir.

Q. What is his name?

A. Michael Kern, Mr. Heller, Mr. Geoghan.

Q. Have you an opinion as to the guilt or innocence of the defendants?

A. I have an impression.

By the Court:

Q. You live near Mr. Geoghan?

A. A neighbor.

Q. You live on Lincoln near Bedford?

[fol. 2079] A. I live on Lincoln Road. I live just three doors away from Mr. Geoghan.

Q. Is this two doors from Mr. Geoghan?

A. Three houses.

Q. The house between you is Mr. Todd?

A. Mr. Geoghan and the two Todd houses, and mine.

By Mr. Turkus:

Q. Are you very friendly with Mr. Geoghan?

A. Yes, sir.

Q. From time to time did you discuss criminal cases with him?

A. Many times.

By the Court:

Q. Did you play cards at his house?

A. Not his house, but he has been entertained in my home and I met him outside socially.

Q. Entertained in your house, at dinner parties or card parties?

A. Yes, sir.

Q. Semi-formal affairs, where everybody talks?

A. Yes, sir.

Q. Did you hear anything spoken of in those conversations about the killing of Joseph Rosen, which happened Sunday, September 13, 1936, in a little candy store at 725 Sutter Avenue?

A. Not after we were instructed by the Court to refrain from discussing this case.

Q. Did you before that?

A. Yes, sir.

Q. Did you hear the facts about the case?

A. Yes, sir.

Q. Were those facts given to you by Mr. Geoghan or some law enforcement agent you had some connection with?

A. Not by Mr. Geoghan, but by others.

[fol. 2080] Q. You know something about the facts in the case?

Mr. Rosenthal: I object, as calling for a conclusion.

Q. Mr. Geoghan did not talk about this case?

A. No, sir, Mr. Geoghan never mentioned the Rosen case, but he has mentioned people in criminal cases from time to time.

Q. Has the mention of them caused a definite impression in your mind, somewhat deeper than a casual impression?

A. Yes, sir.

Mr. Rosenthal: I challenge for cause.

The Court: Try the challenge.

FRED SITTING, residing at 105 Lincoln Road, Brooklyn, New York, was sworn on the challenge.

By Mr. Rosenthal:

Q. You were asked certain questions by the Court and Mr. Turkus while you were sitting in the box?

A. Yes, sir.

Q. Now that you are sworn, would you give the same answers that you gave to those questions?

A. Yes, sir.

Mr. Rosenthal: I press the challenge.

The Court: Challenge sustained.

BENJAMIN BERGMAN, JR., a talesman, was interrogated as to his qualifications to serve as a juror.

By Mr. Turkus:

Q. You live at 466 Rockaway Parkway?

A. Yes.

[fol. 2081] Q. That is around East New York?

A. Yes.

Q. Have you lived there for a number of years?

A. I have.

Q. Would you say more than five?

A. Yes.

Q. Did you ever live in any other section?

A. Yes.

Q. What section?

A. I lived in Brownsville, I don't know what section you would call Lincoln Place.

Q. Would it be the far side of Prospect, from Crown Heights?

A. No, sir, the other side. I think they call that Crown Heights.

Q. For how many years did you live in Brownsville?

A. For a period of about twelve or fourteen years.

Q. When did that period end, somewhere in 1930?

A. Before that, it would be about 1928.

Q. Since then for the most part you have lived on the fringe of Brownsville and East New York, in the Rockaway Avenue district?

A. It would be slightly more than the fringe.

Q. You are listed as a manufacturer. What do you manufacture?

A. I am not doing that now. I was at that time a manufacturer of clothing and then I went in the customs tailor business. I am not doing that now.

Q. You were manufacturing clothing during what years?

A. During 1929.

Q. Did you go up to 1932?

A. No, sir, I think I stopped.

Q. Were you in the garment district in Manhattan?

A. No, sir, in Brooklyn.

[fol. 2082] Q. Did you employ clothing truckers?

A. No, sir.

Q. Did you yourself do some part of the work?

A. We did everything in our own plant.

Q. What did you manufacture?

A. Ladies' garments and cloaks.

Q. Did you make production entirely in your own factory?

A. Yes, sir.

Q. Of course, you had to ship it?

A. Yes, sir.

Q. Didn't you have to have truckers?

A. No, sir, we only shipped through cab or subway.

Q. Having lived in Brownsville and East New York for all the years when you lived in Brownsville, and you now live in the East New York section, are the names Harry Strauss, Pittsburgh Phil, familiar to you?

A. Well, I heard the names through the newspapers only.

Q. Is the name Martin (Bugsy) Goldstein familiar?

A. I heard it from the same source.

Q. What business were you in besides the manufacture of ladies' garments? What did you go in when you left that?

A. I was secretary for a man for a little while, I had a process serving agency.

Q. That put you in contact with various lawyers and with various defendants whom you served with papers?

A. Well, it put me in slight contact.

Q. I am coming to the point. You have an impression, [fol. 2083] haven't you?

A. I have no impression.

Q. After this job as a process server, what did you do?

A. I went back in the clothing trade.

Q. What years were you in the clothing trade?

A. Up to about last year, up to about a year ago.

Q. So you have not been in the clothing trade now since 1930?

A. I said up to a year ago.

Q. When did you go back into it?

A. I went back about 1933 or 1934.

you have been in that business up until last year?

Yes, sir.

Now, while you were in the clothing business before while you were on the other occasion, did you hear the name of Hyman (Curley) Holtz?

No, sir.

Or Philip Orlofsky?

No, sir.

Do you know any officials of the Amalgamated Cloth-workers of America?

No, sir.

Didn't you have dealings with union officials?

No, sir.

Did you have a non-union shop?

Yes, sir.

What business do you do now?

I am working with a corporation, Martin's, on Fulton

Street. That is run by Zeitz?

Yes, sir.

Did you follow the investigation of Mr. Dewey in the papers?

I did not follow it; I read some accounts.

I mean particularly ones about these industries.

Q84] A. No, sir.

They went on while you were in business.

I did follow some accounts of some investigation. I know what particular one.

From your knowledge of the clothing business and what you have heard and what you have read, is the name Lepke familiar to you?

Not from that source; it is familiar from other sources.

The name of Lepke is familiar?

Yes, sir.

Is the name Gurrah familiar?

I heard that.

Do you have some impression as to the name of Lepke?

I have, from what I have read.

Is it an impression about Lepke as a man?

I have no impression; I have none.

I don't want you to say anything—

I want to say exactly the way I think.

Q. You might say something that would cause a lot of trouble for the jurors, and that is why I am careful.

By the Court:

Q. Supposing we put it this way: Near what street do you live on Rockaway Parkway?

A. Near Church Avenue.

Q. You are not far from Saratoga Avenue and Livonia?

A. No, sir, I get off there, that is the station I get off at.

Q. Have you stopped from time to time at Rose Gold's store?

A. Yes, sir, I have.

[fol. 2085] Q. You purchase there?

A. Yes, sir.

Q. Do you stop there?

A. No, sir, I don't believe so, unless I probably meet somebody that I know.

Q. You would stop and chat?

A. Yes, sir.

Q. Are you sure you have not met any of the people whose names have been mentioned here?

A. No, sir, I have not.

By Mr. Turkus:

Q. When you were in the store around that corner did you see people there, men standing around the store or standing on the corner?

A. I saw people standing on the corner.

By the Court:

Q. Inside, around the counter?

A. I generally would make purchases outside, of newspapers.

By Mr. Turkus:

Q. Did you make purchases when Rose Gold was the proprietor?

A. I don't know whether or not I made purchases.

Q. Didn't you read in the newspaper about Rose Gold?

A. I don't know.

Q. You know the one they called Midnight Rose, who kept her store open twenty-four hours, Rose Gold, at Saratoga and Livonia—did you read about her?

By the Court:

Q. Did you know the place was kept open all night?

A. No, sir, I Did not.

By Mr. Turkus:

[fol. 2086] Q. Do you know where Sackman and Livonia is?

A. I know where it is; I am not familiar with it.

Q. You were living adjacent to that district when the Rosen murder happened in 1936, weren't you?

A. I was.

Q. And people in the community were talking about this murder, weren't they? Did you hear things said?

A. I don't think I heard anything. I may have heard it at that time, but right now my memory tells me I did not.

Q. I know you were trying to tell me something. I understand what is in the back of your mind.

A. No, I am trying to remember, but I do not remember.

By the Court:

Q. Have you ever met any of the people at any place whose names have been mentioned here?

A. I have not.

Q. Or any of their relatives?

A. I have not.

Q. Did you know any of them by sight?

A. No, sir; I don't know anybody; if I did know them I would not know their names, so I would not know if they were those people or not.

By Mr. Turkus:

Q. Is there anything in your past experience that has caused you to have a prejudice against any of the defendants at the bar?

A. No, sir.

Q. You have been in the clothing business on all the occasions you told me about?

A. Yes, sir.

Q. And you are familiar with the names of Lepke and [fol. 2087] Gurrah by reading?

A. Yes, sir.

Q. That would be newspaper reading?

A. Yes, sir.

Q. That would be reading, I take it, during the time when Thomas E. Dewey was conducting an investigation?

A. I don't know whether it was during that time or not.

Q. Was it when Judge O'Dwyer was conducting his investigation that you read the names of Lepke and Gurrah?

A. It might have been.

Q. How long ago was it that you read the names of Lepke and Gurrah?

A. About three or four years ago.

Q. And that was ~~before~~ Judge O'Dwyer was District Attorney? He was District Attorney in January, 1940, so your reading must have been while the Dewey investigation was going on. Would that refresh your recollection.

Mr. Rosenthal: I object to what it must have been.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

A. It does not refresh my recollection. I know I read something.

Q. Do you remember what you read about Lepke and Gurrah?

A. I have a slight idea. I told you I did not go into these things in detail.

Q. Do you want to be a juror in this case?

Mr. Barshay: I object to that.

Q. Have you any desire to be a juror?

[fol. 2088] Mr. Rosenthal: I object.

The Witness: I will say this: It will inconvenience me.

The Court: I think from previous questions and answers there might be something in the back of the juror's mind based upon recollection.

Q. Would that affect your ability to pass on the evidence in the case?

A. It would not.

Q. Would you be embarrassed by jury service in this case?

A. No.

Q. As you sit in the jury box now have you any impression about Harry (Pittsburgh Phil) Strauss?

Mr. Rosenthal: I object.

The Court: Objection overruled.

A. I have.

Q. Is it one that is derogatory to him?

A. It is.

Q. That name will figure in the testimony—I just tell you that as a thought—that is about as far as I can go. Have you some idea about Abe Reles?

Mr. Rosenthal: I object.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

A. I have not.

Q. Now, did you presently get off at the corner of Saratoga and Livonia Avenue going to and from work?

A. I do.

Q. How many years have you been getting off at that station?

[fol. 2089] A. Over six years.

Q. Have you any knowledge of the character of that corner?

A. I have.

Mr. Turkus: I will have to challenge this talesman for implied bias, because of his knowledge of the conditions on the corner there.

The Court: Try the challenge.

BENJAMIN BERGMAN, JR., residing at 466 Rockaway Parkway, Brooklyn, New York, sworn on the challenge.

By Mr. Turkus:

Q. While seated in Jury Seat No. 11 I asked you certain questions and you made some responses to me.

A. Yes, sir.

Q. Would those be true now that you are under oath?

A. They would.

Q. In addition to that there was something that you were trying to tell me that I asked you to refrain from because of the other members of the jury that had been selected.

A. It was not anything I tried to tell you; you may have thought I tried to.

Mr. Turkus: I press the challenge.

Mr. Talley: No questions by the defense.

The Court: Challenge sustained.

(The Court then directed that the box be filled with the two remaining talesmen: Arthur S. Funk, No. 2765, and John Furlan, No. 2660.)

[fol. 2090] CHARLES F. WEMMELL was questioned as to his qualifications.

By Mr. Turkus:

Q. Do you live at 1041 Hancock Street?

A. Yes.

Q. Have you lived there for a number of years?

A. Going on six years; before that I lived for eighteen years in the same district.

Q. I think they called that the Bushwick section.

A. Yes, sir.

Q. Your business is salesman. What do you sell?

A. I am in the printing business; I am doing some investigation of my own at the present time in regard to a Surrogate's case in which I am involved, looking up some heirs.

By the Court:

Q. You are not in the Bushwick section, you are in the Stuyvesant Heights.

A. They call it the Bushwick section.

Q. This side of Broadway?

A. Yes, sir.

Q. You are near Patchen Avenue?

A. No, sir, toward Evergreen Avenue.

Q. Between Broadway and Bushwick?

A. Closer to Evergreen.

Q. Are you active in Mr. Toomey's club there?

A. I do not belong to any organizations.

Q. You are not connected with the campaign?

A. No, sir.

By Mr. Turkus:

Q. This litigation you speak about, that is, as I understand it, pending in the Surrogate's Court?

A. It has to be administered. He is trying to get some additional data on heirs, and I am investigating.

Q. Is it litigation in which you have some personal interest?

A. Yes, sir, my own family have the same name.

Q. You are trying to secure sufficient evidence to persuade the public administrator to give you a fund left by this deceased?

A. I am trying to locate missing heirs.

Q. This brings you in the Municipal Building in Brooklyn frequently?

A. No, sir.

Q. Have you a lawyer who represents you on the matter?

A. No, one of the parties involved has.

Q. Do you come in frequent contact with this member of the bar?

A. No, sir, not very often. I saw him twice this year.

Q. What is his name?

A. Harold Bakerman, 15 Park Place, Manhattan.

Q. You stated you were in the printing business until recently. What did you do before that?

A. I was still in the business.

Q. Is that your vocation for most of your adult life?

A. Twenty years.

Q. I take it they were just minor jobs you held before that?

A. Yes, sir.

Q. What is the name of the printing concern?

A. Eakin & Shetter, 263 Ninth Avenue.

[fol. 2092] Q. Do you know Joe Sullivan? He represents some printing outfit.

A. I don't know any of them.

Q. Did any of your business bring you in contact with anybody in Brownsville or East New York area?

A. No, sir.

Q. Or in the garment or clothing district?

A. No, sir.

Q. Or with the clothing truckers?

A. No, sir.

Q. Are any of those names familiar to you?

A. No, sir.

Q. I will come back to you and try to get that thing straightened out, because if that is the only difficulty in the case, let me know it.